

Pro Bono Practices and Opportunities in Scotland¹

I. Introduction

The demand for pro bono legal advice in Scotland has risen in recent years due to an increase in the number of people that are not eligible for Legal Aid but also cannot afford to pay for legal representation. The provision of pro bono legal services in Scotland is also becoming increasingly important for private law firms within Scotland as a result of corporate social responsibility commitments. Many law firms in Scotland seek to fulfill their pro bono initiatives through collaboration with law centers and interaction with local communities.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The legal profession in Scotland is divided into three branches: solicitors, solicitor advocates and advocates.</p> <p>Solicitors are regulated by The Law Society of Scotland (the “Law Society”) and must observe the Law Society of Scotland Practice Rules 2011 (the “Rules”),² which govern the provision of legal services by solicitors.</p> <p>Solicitor advocates are also regulated by the Law Society and must also observe the Rules. However, as these solicitors have extended rights of audience to higher courts alongside advocates, they must pay particular attention to Rule C4.³</p> <p>Advocates are regulated by the Faculty of Advocates (the “Faculty”) under powers delegated to it by the Court of Session. The Court of Session is responsible for regulating the professional practice, conduct and discipline of advocates under the Legal Services (Scotland) Act 2010. The Guide to Professional Conduct (the “Guide”) sets out the principles and rules of professional conduct applicable to advocates in Scotland.⁴</p>
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>To practice as a solicitor/solicitor advocate in Scotland, a person must be admitted as a solicitor, have their name on the roll and hold a practicing certificate. Such practicing certificates are obtained from the Council of the Law Society.</p>

¹ This chapter was drafted with the support of Christopher Clark of Shepherd and Wedderburn LLP.

² Please see <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/> (last visited May 1, 2019).

³ Please see <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-c/rule-c4/> (last visited May 1, 2019).

⁴ Please see <http://www.advocates.org.uk/media/2878/guide-to-conduct-sixth-edition.pdf> (last visited May 1, 2019).

		<p>Pursuant to the Legal Services (Scotland) Act 2010, persons are admitted to the office of Advocate by the Court of Session. The Court of Session is also responsible for prescribing the criteria and procedure for admission but delegates this to the Faculty. However, such criteria and procedure are subject to the approval of the Lord President of the Court of Session.</p>
<p>(b) Pro Bono Practice and Culture</p>		
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>The provision of pro bono legal services by solicitors and/or advocates in Scotland is not regulated by any separate rules specific to pro bono legal services. However, as noted above, all solicitors in Scotland must observe the Rules and all advocates in Scotland must adhere to the Guide, which also apply to the provision of pro bono advice.</p> <p>Pursuant to Rule B2.1.2, in-house solicitors in Scotland must not act for two or more parties whose interests conflict. As it is the role of in-house solicitors to provide legal advice to the company or organization that employs them, they should be mindful of the potential for conflicts of interest to arise with respect to providing pro bono legal advice to third party clients.</p>
	<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>Lawyers in Scotland are not required to work a minimum number of pro bono hours.</p>
	<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspiring lawyers in Scotland are not required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers.</p>
	<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>In Scotland, civil legal assistance is split into two distinct categories: (a) Legal Advice & Assistance (any assistance given to an individual not including court representation); and (b) Assistance by Way of Representation, which covers court representation. The main opportunities for the provision of pro bono legal services are (i) providing advice not covered by the Scottish Legal Aid Board pertaining to personal injury, certain elements of employment law, and advice to companies/charities, or (ii) providing advice to individuals who are deemed</p>

		ineligible for any form of Legal Aid.
	5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?	The main providers of pro bono legal services in Scotland include NGOs (such as Citizens Advice Scotland through their Citizens Advice Bureau, The Ethnic Minorities Law Centre and The Scottish Child Law Centre), charities (such as LawWorks Scotland and Shelter Scotland), law school and university pro bono centers and clinics and private law firms. The Faculty of Advocates also provides pro bono legal services through its Free Legal Services Unit.
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	There is no requirement in Scotland for an additional license to be obtained by lawyers in order to provide pro bono legal services.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	There is no bar to lawyers qualified in another jurisdiction working in Scotland to provide pro bono legal services provided that they do not describe themselves as “solicitors” and instead must describe themselves under their home title. Foreign lawyers cannot undertake certain types of work reserved by statute for Scottish-qualified solicitors. These are set out in section 32 of the Solicitors (Scotland) Act 1980 and include the conveyancing of land and/or buildings, litigation (civil or criminal) and obtaining confirmation in favor of executors (the Scottish equivalent of probate). However, this is slightly relaxed for European lawyers under the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 ⁵ which allows European lawyers to undertake certain types of work. European lawyers are allowed to represent individuals in litigation. Lawyers from a select group of European countries are also allowed to undertake conveyancing and executory work.
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?	Pursuant to Rule B7.1.2, the Law Society maintains the Master Policy, which is a compulsory professional indemnity insurance arrangement that covers all Scottish solicitors working in private practice (this includes cover for pro bono legal services). However, there is no requirement for professional indemnity insurance for in-house solicitors.

⁵ See <https://www.legislation.gov.uk/ssi/2000/121/contents/made> (last visited May 1, 2019).

		<p>Under paragraph 5.1.4 of the Guide, advocates are obliged to maintain a reasonable level of professional indemnity insurance cover having regard to the nature of that advocate’s practice.</p> <p>As well as holding professional indemnity insurance coverage in its work for their direct employer, a lawyer must have coverage if they act for a client other than his or her employer, including a pro bono client.</p>
	<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>Rule B3.2 states that solicitors in Scotland must not make a direct or indirect approach whether verbal or written to any person whom they know or ought reasonably to know to be the client of another regulated person with the intention to solicit business from that person and, as such, solicitors must consider whether a potential third party pro bono client is already a client of another solicitor or law firm before approaching them.</p> <p>Paragraph 10.2 of the Guide sets out several prohibitions to an advocate’s right to advertise its services in Scotland. These include that any such advertising must not be inaccurate or likely to mislead, make direct comparisons in terms of quality with or criticisms of other identifiable persons and/or include statements about the advocate’s success rate.</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Pro bono work does not constitute Continuing Professional Development for solicitors, solicitor advocates or advocates in Scotland.</p>
<p>(d) Sources of Pro Bono Opportunities and Key Contacts</p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Scotland.</p>	<p>The Government Legal Service for Scotland (the “GLSS”) is a professional community of government lawyers in Scotland. The GLSS Pro Bono Network is designed to encourage government lawyers to volunteer their legal services for the benefit of the wider community. Through the GLSS Pro Bono Network, government lawyers can become involved in a number of pro bono activities, including providing advice at their local citizens advice bureau, serving as a charity trustee, raising funds, lobbying at local and national levels, negotiating agreements and establishing citizens advice bureaux.</p>

<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Scotland.</p>	<p>The main non-governmental sources of pro bono in Scotland include bodies that work to connect organizations that are able to provide pro bono legal services with individuals or bodies that require them, such as LawWorks Scotland⁶, Citizens Advice Scotland⁷, Inspiring Scotland⁸ and the Faculty of Advocates Free Legal Services Unit⁹.</p>
<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>See above.</p>

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⁶ See <http://www.lawworksscotland.org/legal-advice-other-services/> (last visited on May 1, 2019).

⁷ See <https://www.cas.org.uk/> (last visited on May 1, 2019).

⁸ See <https://www.inspiringscotland.org.uk/> (last visited on May 1, 2019).

⁹ See <http://www.advocates.org.uk/instructing-advocates/free-legal-services-unit/free-legal-services-unit-homepage> (last visited on May 1, 2019).