

Scottish
Court Service



Scottish Court Service Framework Document

**Agreement Between
the Scottish Ministers
and
the Scottish Court Service**

July 2010

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1. INTRODUCTION

1.1 The Scottish Court Service (SCS), established by section 60(1) of the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act), is a body corporate, which is part of the Scottish Administration but not part of the Scottish Government. The change in status of the Scottish Court Service from an Agency of the Scottish Government to a body corporate is a further step in the progression of principles of judicial independence.

1.2 This Framework Document sets out the terms of an agreement between the SCS and the Scottish Ministers in relation to the governance, financing and operation of the functions of the SCS. The Framework Document is a statement of intent, agreed jointly. It does not create legal obligations.

Functions of the SCS

1.3 The 2008 Act introduced changes to the arrangements for Scotland's judiciary and to the way in which its courts are administered. The intention of the Act was to modernise the arrangements for the judiciary and the management of the court system, thereby strengthening the independence of the judiciary and bringing about improvements for those who use and come into contact with the courts.

1.4 Under the 2008 Act, the functions of running the court service transferred to the SCS with effect from 1 April 2010. The functions of the SCS are set out in sections 61 to 64 of the 2008 Act, which require it to provide, or ensure the provision of:

- the property, services, officers and other staff required for the purposes of the:
 - Court of Session;
 - High Court of Justiciary;
 - court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983 and the election court for Scotland under that Act;
 - Lands Valuation Appeal Court,
 - sheriff courts;
 - justice of the peace courts; and
 - the judiciary of those courts; and,
- the property, services and staff required for the purposes of:
 - the Lord President in carrying out functions as Head of the Scottish Judiciary (defined in section 2(2) of the Act) and other non-judicial functions;
 - any judicial office holder in carrying out of functions delegated to the office holder by the Lord President;
 - the sheriffs principal in carrying out their statutory functions;
 - the Public Guardian; and,
 - the Court of Session, Criminal Courts and Sheriff Court Rules Councils.

1.5 The SCS provides leadership and broad direction to the staff it employs and holds the Chief Executive (CEO) to account for the performance of the SCS. The CEO is responsible for the day-to-day running of the SCS. The staff of the SCS are civil servants, appointed by and accountable to the SCS.

2. SHARED PRINCIPLES

2.1 The SCS and Scottish Government acknowledge the following shared principles:

- The SCS and the Scottish Ministers are committed to the aim of good communications with each other, and especially where the work of one has bearing upon the responsibilities of the other. The primary aim is not to constrain the discretion of either the SCS or Scottish Ministers but to allow them to make representations to each other in sufficient time for those representations to be fully considered.
- The SCS and Scottish Ministers will both work in ways that support the best principles of corporate governance and financial accountability.
- The SCS and Scottish Ministers will both work in ways that will safeguard the independence of the judiciary and promote effective access to justice.
- In line with the terms of section 61(2) of the 2008 Act, the SCS will, in carrying out its functions, so far as is practicable and appropriate, co-operate and co-ordinate activity with other persons having functions in relation to the administration of justice.
- In line with the terms of section 65 of the Act, where the SCS gives information or advice, or makes proposals to the Scottish Ministers on any matters relating to the functions of the SCS, or the general administration of justice in Scotland, the Scottish Ministers must have regard to such information, advice or proposals.

3. THE SCOTTISH COURT SERVICE BOARD

Members of the Scottish Court Service Board

3.1 The SCS has thirteen members consisting of 7 judicial and 6 non-judicial members. Membership of the SCS consists of the Lord President (Chair), the Lord Justice Clerk, the CEO of the SCS and ten other persons of different judicial and non-judicial categories, each of whom will be appointed by the Lord President following a selection process outlined in regulations made by Scottish Ministers.

3.2 The three members who are not members of the judiciary or of the legal profession will have relevant knowledge and experience in commerce, finance or administration or otherwise have skills and experience which would contribute effectively to the work of the SCS.

Standing Orders and Declaration of Interests

3.3 The SCS operates within Standing Orders which are published on the SCS website. The Standing Orders set out a code of conduct and provide for the circumstances in which members must declare any interest on a subject under discussion or consideration.

Role of the Members of the SCS

3.4 The members of the SCS are corporately responsible for the leadership and broad direction of the organisation, for ensuring that it carries out its functions effectively and efficiently, and for ensuring that it meets the aims and objectives agreed between the SCS and the Scottish Ministers and recorded in the SCS Corporate Plan. In particular, the members of the SCS shall:

- establish the overall strategic direction of the SCS;
- communicate widely the aims and objectives of the SCS;
- ensure strong working relationships are established between the staff employed by the SCS and the judiciary at all levels;
- provide leadership and commitment to the development and promotion of effectiveness, efficiency, economy and equality throughout the SCS;
- delegate execution of the functions of the SCS to committees and the CEO as appropriate;
- comply with any statutory or administrative requirements specified in the Scottish Public Finance Manual (SPFM), for the use of public funds;
- ensure that all legal responsibilities are complied with; and,
- protect and enhance public confidence in the SCS.

3.5 If legal proceedings are brought against any member of the SCS by a third party, the SCS will meet any civil liability which is incurred by that member in the execution of their functions, provided they have acted honestly and in good faith.

The Chair of the SCS

3.6 The primary duty of the Lord President as Chair of the SCS is to lead the SCS in the successful performance of its functions. In doing so, the Lord President will exercise particular leadership responsibilities on the following matters:

- formulating the SCS strategy and direction;
- ensuring that in reaching decisions members of the SCS have due regard to all appropriate information and guidance;
- ensuring that actions and decisions taken by the SCS are in accordance with its statutory obligations and are consistent with its aims and objectives;
- encouraging high standards of propriety and regularity across members and staff of the SCS; and
- building relationships with, and representing the views of the SCS, to Scottish and United Kingdom Ministers, Scottish and United Kingdom Parliaments and others having functions or relevant interest in the administration of justice.

3.7 The Lord President, as Chair of the SCS, shall also:

- ensure that all members of the SCS, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities, and receive appropriate induction and ongoing training, including on the financial management and reporting requirements of public sector bodies; and,
- ensure that there are adequate arrangements in place for the ongoing review of members' contribution to the SCS.

The Chief Executive

3.8 In executing responsibility for the day-to-day operation of the functions of the SCS and the leadership of the staff it employs, the CEO works under the general direction of the SCS and in accordance with this Framework Document. The CEO is held to account by the SCS, in particular, for the management of the SCS budget and business plans and the efficient and effective delivery of SCS business.

3.9 The CEO is designated as the Accountable Officer by the Principal Accountable Officer for the Scottish Administration (in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000) and is personally responsible for safeguarding the public funds for which he or she has charge and for ensuring propriety and regularity in the handling of those public funds.

3.10 The CEO should act and take steps necessary to ensure that the SCS corporately acts in accordance with the terms of relevant guidance in the Scottish Public Finance Manual and other financial instructions and guidance issued by the Scottish Ministers.

3.11 The CEO may delegate the day-to-day administration of the Accountable Officer responsibilities to other employees of the SCS. The CEO shall not assign absolutely to any other person any of the responsibilities set out in this document.

3.12 The CEO is responsible for informing the Principal Accountable Officer about any complaints about the SCS accepted by the Scottish Public Services Ombudsman

for investigation and about the SCS's proposed response to any subsequent recommendations from the Ombudsman.

3.13 The CEO's responsibilities include:

- ensuring members of the SCS are provided with high-quality, impartial, transparent and honest advice on all areas of the SCS's responsibilities;
- providing effective leadership to the staff employed by the SCS;
- ensuring the efficient and cost-effective day to day management of functions of the SCS;
- ensuring that financial considerations are made clear to the members of the SCS at all stages in reaching and executing decisions;
- ensuring that effective human resource management policies are maintained for staff employed by the SCS and that strategic human resource planning is related to the SCS's objectives;
- ensuring robust systems of management and control are in place within SCS that support the achievement of the SCS targets, policies, aims and objectives, whilst at the same time ensuring the identification of risks to inform decisions on financial and operational planning; and
- ensuring the broad direction and particular perspective of the SCS is conveyed to official level boards and committees of the Scottish Government.

3.14 The appointment of the CEO will be conducted in line with the Civil Service Commissioners' Recruitment Principles as they apply to Senior Civil Servants in Scotland. The CEO's remuneration is agreed in accordance with the performance and award arrangements for members of the Senior Civil Service Pay Band 2.

Performance Management

3.15 It will be the responsibility of the Lord President and the SCS Board to ensure that the performance of the Senior Civil Servants working for the SCS is managed to meet both the needs of the business and the requirements of the Cabinet Office Strategy on Senior Civil Service performance management. Performance management should cover business, corporate and capability objectives. In the case of the CEO, the annual report will be written by the Lord President and countersigned by the Director General for Justice and Communities.

The Director General for Justice & Communities

3.16 The Director General will ensure that the CEO or, where appropriate, the Lord President, is informed about relevant issues which may affect the SCS's functions or operations.

3.17 Taking account of the draft Corporate Plan, draft Annual Report and other information provided by or requested from the SCS, the Director General will be responsible for advising the Scottish Ministers about the operation and performance of the SCS.

Non-Judicial / Non-Legal Members

3.18 The three non-judicial and non-legal members of the SCS provide expertise and a perspective from outwith the justice system. One of them is the Chair of the SCS Audit Committee.

Reporting responsibilities of the SCS

3.19 The SCS will, before each planning period, submit to the Scottish Ministers for approval a Corporate Plan describing how it proposes to carry out its functions during the period. The plan will be in a form and contain such information as Scottish Ministers direct. Once approved by Scottish Ministers, the Corporate Plan will be laid before the Scottish Parliament.

3.20 As soon as practicable after the end of each financial year, the SCS will prepare and publish an Annual Report on the carrying out of its functions during that year. It is for the SCS to determine the form and content of the report and how it is published. As a matter of courtesy, the SCS will provide Scottish Ministers with sight of the report before it is published. The SCS will send a copy of the published report to Scottish Ministers and lay a copy before the Scottish Parliament.

Accountability of the SCS members

3.21 Individual members of the SCS are accountable to the Chair of the SCS for their conduct as members of the SCS.

Staff of the SCS

3.22 Staff of the SCS are civil servants, appointed by open competition and subject to public sector pay policy. All staff employed by the SCS have a duty to the CEO and through the CEO to the SCS to support the efficient and effective operation of the courts and for the achievement of the SCS's aims and objectives.

3.23 The extent to which staff fulfill this duty is reflected in their annual individual appraisal reports. Existing line management arrangements and terms and conditions are not affected by this Framework Document.

3.24 Whilst individual members of the judiciary do not exercise day to day management responsibilities for staff, SCS staff are subject to the direction of the judiciary when they are supporting the judiciary in the conduct of the business of the courts in matters such as case allocation and case management in accordance with existing court processes. Such direction will, however, always be subject to administrative directions issued by either the relevant sheriff principal, the Lord President or any other judicial office holder to whom the Lord President has lawfully delegated part of his functions.

3.25 The SCS may review the terms and conditions of service of staff in the interests of improved efficiency and effective management and the need to recruit, retain and motivate its workforce. Proposals for change to terms and conditions will take account of the requirements set out in the Scottish Government's Public Sector Pay Policy and any necessary approval by the Scottish Government Remuneration Committee on behalf of the Scottish Ministers. The SCS will also use its partnership

agreement with the Public and Commercial Services Union to conduct negotiations and consultation, as appropriate, with staff and their representatives. Non-salary rewards must comply with the guidance in the Non-Salary Rewards section of the Scottish Public Finance Manual. The SCS shall comply with relevant UK employment legislation.

3.26 The SCS is responsible for ensuring that staff recruitment arrangements are fair, open and transparent in line with the Civil Service Commissioners' Recruitment Principles.

3.27 The SCS will have appropriate workforce planning arrangement to ensure that the organisation can deliver future service requirements.

3.28 The SCS is responsible for determining its management structure and the number and levels of staff below the level of the Senior Civil Service. The creation of Senior Civil Servant posts, and their reward, is part of a UK-wide scheme, and the SCS will require to agree with Scottish Government the creation of these posts, the means of recruitment, and levels of reward.

3.29 All staff will be treated fairly in accordance with SCS policies and the SCS will ensure that there are appropriate arrangements made for staff welfare.

Employee learning

3.30 The SCS will have an appropriate training strategy which supports the delivery of the SCS's commitment to improving the effectiveness of its work. The strategy should pay particular attention to the SCS's own organisational priorities as set out in the corporate plan and to the development needs of individual members of staff.

Employee relations

3.31 The SCS will establish and maintain partnership arrangements with staff representatives, consistent with the requirements of the Employee Information and Consultation Regulations 2004.

Health and Safety

3.32 The SCS is responsible for ensuring that appropriate action is taken to comply with the requirements of the Health and Safety at Work Act 1974 and other legislation.

4. SCS AND THE SCOTTISH PARLIAMENT

Relationship

4.1 The SCS will be corporately accountable to the Scottish Parliament for the efficient use of public resources. The principal route of accountability to the Scottish Parliament is through the CEO as Accountable Officer. The SCS has the right to make representations and proposals to the Scottish Parliament on matters relating to the functions of the SCS or the administration of justice in Scotland, either at the invitation of Parliament or through the Scottish Ministers. Neither the exercise nor the non-exercise of this right precludes expression of SCS views on these matters in correspondence with individual or representative parliamentarians.

4.2 The Scottish Parliament has the power to require the attendance of any non-judicial member or officer of the SCS. Section 23 of the Scotland Act 1998 provides that neither the Lord President nor other members of the judiciary can be required to appear before the Scottish Parliament and this restriction applies in relation to their respective roles as members of the SCS as well as to their judicial function.

4.3 Notwithstanding the above, the Lord President will consider invitations received from the Parliament relating to judicial members of the SCS, and, in consultation with other judicial members of the SCS and the relevant Committee of the Parliament will decide whether it is appropriate for a judicial member to attend, consistent with their responsibilities within the SCS.

4.4 No member of the SCS would expect to be asked any questions about matters which did not relate directly to their role within the SCS. In particular, judicial members would not answer questions about the exercise of their judicial functions, for which they are constitutionally not accountable to the Scottish Parliament.

Parliamentary Questions

4.5 Scottish Ministers will not be accountable through Parliamentary Questions (PQs) for the operations of the SCS.

4.6 PQs to Ministers may, however, seek information from Ministers about matters for which the Scottish Government has a general responsibility, which Ministers cannot provide without assistance from the SCS. In particular, PQs may seek statistical information from the Scottish Ministers about the performance of the justice system, and Ministers may seek information from the SCS to enable them to respond to such questions. Section 68 of the Act requires the SCS to provide the Scottish Ministers with such information. As far as is practicable, the SCS will seek to provide such information timeously.

4.7 The Scottish Parliament can also ask Ministers about their own relations with the SCS, e.g. about what Ministers have specified should be included in the SCS Corporate Plan, what guidance Ministers have issued to the SCS, and whether Ministers are considering using their default power to take back the functions of the SCS.

Correspondence from Members of the Scottish Parliament

4.8 When Members of the Scottish Parliament (MSPs) seek information from the SCS on matters for which it is responsible, such correspondence will be responded to by the CEO or a senior officer acting on his or her behalf, normally within 20 working days of receipt.

4.9 Responses will be made publicly available on the SCS website except where inappropriate e.g. in relation to confidential matters such as correspondence which includes private information about constituents and their dealings with the courts or where otherwise publication would be precluded under data protection legislation. The respondent will decide whether a response should be made publicly available taking account of the views of the correspondent and the requirements of the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998.

4.10 Similar arrangements will apply to the handling of questions from members of the UK Parliament.

4.11 Statistics related to the number of questions received from MSPs, the time taken for responses to issue, and performance against any target for handling times will also be published on the SCS website.

5. FINANCE AND RESOURCE ALLOCATION

Budgetary Responsibilities

5.1 The SCS is responsible for preparing a budget for each financial year which enables the SCS to meet its statutory obligations and for ensuring that expenditure is in line with the budget.

5.2 The agreed net cost of running the SCS will be funded by the Scottish Parliament and covered by a separate line in the annual Budget Act. Its budget will be regarded as programme expenditure¹.

Relationship with the Scottish Government

5.3 The SCS as a non-Ministerial entity will have a separate budget distinct from the Justice portfolio budget which will appear separately in the Budget Bill. It is for Scottish Ministers to determine the budget proposals to be submitted to Parliament within the Budget Bill, including the proposed budget for the SCS. The Scottish Government will liaise with the SCS to identify its budgetary requirements that will be reflected in the Budget Bill which Ministers present to the Scottish Parliament.

5.4 When setting budgets in a Spending Review the SCS will be invited, along with other justice system agencies, to identify its resource needs. The Scottish Ministers will consider the SCS's resource needs alongside those of the rest of the justice system and consider how to allocate resources in order to ensure the SCS has sufficient resources to meet its statutory obligations.

5.5 Where agreement for the budget for the SCS cannot be reached between the parties, there will be a right of representation. In the first instance, this will be between the CEO, as Accountable Officer, and the Director General for Justice and Communities. Failing agreement being reached at official level, there will be a right of representation between the Lord President and the Cabinet Secretary for Finance and Sustainable Growth. Every effort will be made by both parties to ensure agreement. It will ultimately be for Scottish Ministers to determine the budget allocations within the Budget Bill.

5.6 The SCS will provide budgetary and monitoring information on the SCS expenditure to the Justice Finance Programme Management team as requested.

Court Fees

5.7 Court fees and fees for services offered by the Office of the Public Guardian (OPG) are prescribed by Scottish Ministers under statutory powers conferred by the Court Fees and Legal Aid (Scotland) Act 1983. The SCS will provide to the Scottish Ministers such information as they require on this issue. The Scottish Ministers will take account of that information in proposing any change to the level of court fees or fees for services offered by the Office of the Public Guardian.

¹ The Scottish Public Finance Manual describes "programme expenditure" as expenditure other than on central administrative costs.

Budget Authority

5.8 Subject to the limits imposed by the budget allocated to the SCS and other applicable guidance issued by the Scottish Ministers to the SCS, the SCS has full authority to incur expenditure on individual items.

Annual Report and Accounts

5.9 In fulfilling its statutory duty to prepare and publish a report on the carrying out of its functions, the SCS shall append to that report the SCS annual accounts and will copy the report and the accounts to the Scottish Ministers and lay them in the Scottish Parliament as soon as practicable and within nine months of the end of the financial year to which the report and accounts pertain. Advance copies of the Annual Report and Accounts will be provided to the Scottish Government ahead of their publication.

Internal Audit

5.10 As the SCS is part of the Scottish Administration, the Principal Accountable Officer requires that the SCS has systems in place that give him or her assurance that Scottish Administration resources are being used properly. The SCS will utilise the services of an independent and qualified internal auditor.

External Audit

5.11 The SCS will be subject to external audit by the Auditor General for Scotland.

Procurement and Shared Services

5.12 SCS will adopt its own procurement policy using Scottish Government procurement guidance and other best practice principles. The policy will be regularly updated to integrate this policy with current best practice.

5.13 In the interests of efficiency, effectiveness and economy, the SCS and the Scottish Ministers are committed to identifying opportunities for shared services. The SCS will continue to make use of Scottish Government negotiated contracts, where the SCS and the Accountable Officer consider this to be the option that delivers “Best Value” in meeting the SCS’s business requirements and statutory responsibilities. SCS may enter into contracts on its own behalf if that would be more efficient, effective and economical.

6. POLICY

SCS Internal Policy

6.1 Under the general directions of the members of the SCS, staff develop and implement policy in relation to any aspects of the SCS functions and provide guidance to operational staff. In this respect, SCS staff consult and work with the judiciary and others involved in the justice system, where necessary and appropriate, with reference to the aims and priorities set by the SCS Board.

Government Policy

6.2 The Scottish Ministers will consult the SCS on all policy and legislative proposals which the Scottish Government is developing that may have an operational impact on the courts. Scottish Ministers will consult the SCS in reasonable time to allow the SCS to make representations and for those representations to be fully considered before final decisions are taken and publicised.

6.3 The Scottish Ministers will also consult the SCS when it is engaged with the United Kingdom Government in relation to policy or legislation they may be developing domestically or internationally with other legislative bodies that may have an operational impact on the courts. In doing so, Scottish Ministers will have regard to SCS advice (see section 65 of the Act) and will ensure that policy lines are reflective of the independent nature of the SCS.

6.4 The SCS will ensure that it will consult the Scottish Ministers and other relevant parties on any strategic or operational proposals that might have an impact for the wider administration of justice. SCS will consult the Scottish Ministers and other parties in reasonable time to allow them to make representations and for those representations to be fully considered before final decisions are taken.

6.5 The above provisions do not affect the practice and procedure whereby government policy makers may consult the judiciary on legislative or other proposals.

7. INFORMATION MANAGEMENT

7.1 The Scottish Government and SCS will seek to ensure the appropriate exchange of relevant information to help fulfil their respective functions in relation to the judiciary and the courts.

7.2 As far as is practical, the SCS will provide the Scottish Government with relevant analytical data that they hold that will assist the development, monitoring and evaluation of Government policies. Where appropriate, the exchange of analytical data will be subject to data sharing agreements between the SCS and Scottish Government.

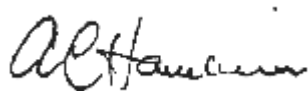
7.3 The SCS and Scottish Government will share with each other, in advance, any public communications that either intends to issue that relate to the judiciary and courts or to the wider justice system that might have implications for the judiciary and courts.

8. REVIEW AND INTERPRETATION

8.1 This Framework Document will be reviewed in consultation with the Scottish Ministers after 3 years and at least every 5 years thereafter.

8.2 This Framework Document may be reviewed at any other time if either the Scottish Ministers or the SCS so wish, on the basis of arrangements that they will agree in writing at that time.

8.3 Amendments to this Framework Document will be laid before the Scottish Parliament.



*Signed on behalf of the
Scottish Court Service*

Date:

19th July 2010



*Signed on behalf of
Scottish Ministers*

Date:

20th July 2010