

Consultation on the Creation of a Scottish Civil Justice Council

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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

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RESPONDING TO THIS CONSULTATION PAPER

We are inviting written responses to this consultation paper by 22 December 2011.

Please send your response with the completed **Respondent Information Form** (see "Handling your Response" below) to:

Ondine.Tennant@scotland.gsi.gov.uk

or

Ondine Tennant
Legal System Division
2W
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Ondine Tennant on 0131 244 3839.

We would be grateful if you (if appropriate) would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form which forms part of the consultation (see Annex C) as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore

have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form) and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and on the [Scottish Government consultation](#) web pages. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on our policy for the Civil Justice Council. We aim to issue a report on this consultation process in January 2012.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name and title:
Ondine Tennant

Address:
Legal System Division
2W
St. Andrews House
Regent Road
Edinburgh
EH1 3DG

E-mail:
Ondine.Tennant@scotland.gsi.gov.uk

More details on the Scottish Government consultation process can be found at Annex D.

Introduction

1. Lord Gill, in his *Scottish Civil Courts Review*, made a total of 206 recommendations for reform of the civil court system. Some of these are structural (such as the creation of a new sheriff appeal court and the creation of a third tier of judiciary in the sheriff court), and many of them are procedural (such as case management, modernisation of the civil procedure rules, judicial specialisation and simplified procedures for lower value cases).

2. The Scottish Government is committed to reform and modernisation of Scotland's civil justice system, and has accepted, in principle, the majority of Lord Gill's recommendations.¹ A number of the recommendations are already being taken forward, including:

- the independent Review of Expenses and Funding of Civil Litigation in Scotland, being overseen by Sheriff Principal James Taylor²;
- providing a basis for rights of audience for lay representatives in the Legal Services (Scotland) Act 2010; and
- the implementation of Lord Penrose's recommended reforms to the handling of business in the Inner House.

3. Plans for further implementation of the *Scottish Civil Courts Review* recommendations will require a mixture of primary legislation and procedural rules of court. This work is therefore being taken forward in conjunction with justice partners to deliver a comprehensive package of civil court reform under the oversight of the Scottish Government's wider *Making Justice Work* programme. The broad intention is to phase in a series of measures, including legislation, beginning in the early years of the Parliament, to implement the recommendations.

4. The majority of the recommendations will require changes to the civil procedure rules of court. As the responsibility for that rests with the Lord President, some form of body or group of persons will also be required to assist the Lord President in making those rules. Arguably, the reforms could be taken forward by the two existing rules councils. However, Lord Gill argued that they were not well placed to do this; to provide the necessary overview and to achieve harmonisation of the rules, Lord Gill recommended the establishment of a single rules Council, with a remit similar to that of the Civil Justice Council in England and Wales alongside responsibility for drafting the rules of court.³

5. The Scottish Government agrees that a new body is required to take all of this work forward. This consultation paper seeks views on Scottish Government proposals for the establishment of a Scottish Civil Justice Council to replace the existing civil rules councils of the Court of Session and sheriff court, with an

¹ *Scottish Government Response to the Report and recommendations of the Scottish Civil Courts Review* (November 2011): <http://www.scotland.gov.uk/Publications/2010/11/09114610/0>

² <http://scotland.gov.uk/About/taylor-review>

³ Recommendation 206, *Report and Recommendations of the Scottish Civil Courts Review* (2009): <http://www.scotcourts.gov.uk/civilcourtsreview/>

additional policy role to make recommendations for the improvement of the civil justice system.

6. The UK Ministry of Justice is currently consulting on its plans to abolish the Administrative Justice and Tribunals Council (AJTC) in March 2012.⁴ The AJTC has a Scottish Committee (the SCAJTC) which carries out the AJTC's functions in Scotland, and if the AJTC is abolished the SCAJTC will also be abolished. Scottish Ministers have therefore been considering what, if anything, should replace the SCAJTC. This consultation paper therefore seeks views on whether the Council's remit should include administrative and tribunal justice.

Consultation to Date

7. Lord Gill consulted on the question "Are the current arrangements for making the rules of civil procedure satisfactory?". 75% of the respondents to that question thought the current system for making rules was unsatisfactory and 50% of those suggested a single rules council with a widened membership.⁵

8. As noted above, the Scottish Government is working closely with justice agencies, including the Scottish Court Service, the Lord President and his judicial office, on plans for the implementation of civil courts reform.

9. A discussion event, titled: *Think Tank on the Role of a Civil Justice Council in Reforming Civil Procedure*, was held in Glasgow on 30 June under the auspices of Strathclyde University. That sought stakeholders' views on the proposal to create a new Scottish Civil Justice Council. The event was attended by members of the judiciary, representatives from the Court of Session and Sheriff Court Rules Councils (which included members of the legal profession), representatives from the Scottish Government, the Scottish Legal Aid Board and Consumer Focus Scotland. Their views have been taken into account in preparing the proposals outlined in this paper.

⁴ Consultation on reforms proposed in the Public Bodies Bill: *Reforming the public bodies of the Ministry of Justice* <http://www.justice.gov.uk/consultations/reform-public-bodies.htm>

⁵ Para 13, Ch. 15, *Report and Recommendations of the Scottish Civil Courts Review* (2009)

Background

Civil Rules Councils in Scotland

10. The Court of Session has the power to regulate civil procedure in the Scottish Courts, primarily under section 5 of the Court of Session Act 1988 ("the 1988 Act") and section 32 of the Sheriff Courts (Scotland) Act 1971 ("the 1971 Act").

Sheriff Court Rules Council

11. Under section 34 of the 1971 Act, the Sheriff Court Rules Council has the function of reviewing the procedure and practice followed in civil proceedings in the sheriff court, and of preparing draft rules to govern such proceedings. These draft rules are then submitted to the Court of Session to be passed as an Act of Sederunt, subject to the Court's approval, and with any modifications, if any, the Court considers appropriate.

12. The Court of Session can also act without draft rules having been submitted, under section 32(3) of the 1971 Act but, in such a case, must consult with the Sheriff Court Rules Council and take into consideration any views expressed by it.

Court of Session Rules Council

13. The Court of Session Rules Council performs a similar function to the Sheriff Court Rules Council and, under section 8 of the 1988 Act, can formulate new rules of court, which are submitted to the Court of Session to be passed as an Act of Sederunt, subject to the court's approval.

Support for the Rules Councils

14. Support for the rules councils is provided by the Scottish Court Service under section 62 of the Judiciary and Courts (Scotland) Act 2008. Each Council has secretariat support responsible for business planning and management, administration, policy research and development, legal advice and drafting of the rules.

The Role of the Scottish Government

15. The Scottish Government is not responsible for the formulation of new rules of court, though it is represented on the Sheriff Court Rules Council, and a government official regularly attends the meetings of the Court of Session Rules Council.

16. Although the overall responsibility for the efficient disposal of business in the courts lies with the Lord President, and the functions of running the court service rest with the Scottish Court Service, the Scottish Ministers have a duty to "have regard to the need for the judiciary to have the support necessary to enable them to carry out

their functions”.⁶ This duty, coupled with the fact that the effective functioning of the courts is central to achieving many of the outcomes sought by Government, means that the Scottish Government has regard to the potential effects of the rules councils decisions and policies on court procedures. Scottish Ministers are also interested in the efficient operation of the courts, given this is largely funded through the Scottish Government budget and that funding for improved service delivery and access to justice are key spending priorities.

⁶ Section 1 Judiciary and Courts (Scotland) Act 2008

Discussion of Proposals and Consultation Questions

17. The Scottish Government agrees with Lord Gill's recommendation that a new body is needed to take forward the procedural changes required to implement the forthcoming programme of civil courts reform, and to keep the civil justice system under review.

18. The creation of a Scottish Civil Justice Council would be key to implementing the report's recommendations, which represent the greatest programme of Scottish civil courts reform in a century. There is currently no single body or person with the strategic overview, capacity and authority to undertake these tasks. It is proposed that the new body should take over, and expand upon, the functions of the current civil rules councils.

The current arrangements

19. The current councils perform a largely technical role in considering specific changes to rules of court in response to specific procedural issues arising in the courts or policy changes driven by the Scottish Government, or legislative change in the Scottish or Westminster Parliaments or the EU. Critically, they do not consider the whole court system (their remits are confined respectively to the Court of Session and sheriff courts). Lord Gill considered the new body should have a whole system viewpoint and a different approach to the existing rules councils.

20. Consideration has been given to adopting in Scotland a model similar to that in England and Wales, which has a policy body separate and distinct from the technical rule-making body. Further details of these bodies can be found at Annex A.

21. The Scottish Government believes the scale of the Scottish jurisdiction and the need for a co-ordinated package of major reforms argue for a single body, responsible both for the strategic overview and for taking forward the technical changes to achieve their strategic aims.

22. The existing rules councils are geared towards care and maintenance work in ensuring the rules are amended in line with legislative requirements. The Council would be almost entirely devoted in its first few years to taking forward the procedural changes required to implement Lord Gill's recommendations for civil courts reform.

23. As well as taking forward these reforms, it is proposed that the new body should be designed to make the functioning of the civil justice system more naturally adaptive, taking into account regular feedback and fostering a culture of continuous improvement.

Links to Administrative Justice and Tribunals

24. The UK Ministry of Justice is currently consulting on its plans to abolish the Administrative Justice and Tribunals Council (AJTC) in March 2012. The AJTC was established by the Tribunals, Courts and Enforcement Act 2007. Its functions are to:

- keep under review the constitution and working of tribunals;
- consider and report on any issue that relates to tribunals; and
- consider and report on any issue referred to it by the Lord Chancellor, Scottish Ministers or Welsh Ministers.

25. In Scotland the AJTC's functions are carried out by a Scottish Committee. Scottish Ministers appoint the members of the Scottish Committee, two of whom also sit on the central AJTC Council itself. The SCAJTC has members from a range of backgrounds, including academics and solicitors.

26. Given that the UK Government currently wish to abolish the AJTC, including its Scottish Committee, Ministers have been considering the possible role of an independent body dealing with administrative justice. There are close links between civil justice and administrative justice (including tribunals), and we propose that tribunals and administrative justice are included in the Scottish Civil Justice Council's remit. This will enable a body independent of the Scottish Ministers to continue to examine the current system, highlight any issues, and make recommendations. Views are sought on whether the Council's remit should extend to consideration of administrative and tribunal justice.

Public Bodies Policy

27. The Lord President, as Head of the Scottish Judiciary and Chair of the Scottish Court Service, has various statutory responsibilities in relation to the making of rules and the efficient disposal of business in the Scottish courts.⁷ It is therefore intended that the emphasis and balance, particularly in terms of governance, accountability, appointments and direction, should remain with the Lord President rather than Ministers. The Council would not therefore fall to be classified as a non-departmental public body (NDPB).

28. The Scottish Government considered whether some, or all, of the Council's proposed functions should be conferred on a different body. The Scottish Government considered in particular conferring additional functions on the Scottish Law Commission ("the SLC").⁸

29. The Scottish Government, however, favours conferring new functions on the Council only. Although the SLC's functions include keeping "under review all the law with which they are respectively concerned with a view to its systematic development and reform"⁹, the SLC is required to report to Ministers. The Scottish Government

⁷ Section 2 Judiciary and Courts (Scotland) Act 2008

⁸ Established by section 2 of the Law Commissions Act 1965.

⁹ Under section 3 of the 1965 Act.

considers the more effective line of accountability for taking forward procedural reforms to the court rules is to have a body accountable to the Lord President. It may be appropriate, however, for the Council and the SLC to work together on particular projects.

30. The Scottish Government also considered whether it would be appropriate to set up a non-statutory body. However, it is felt that a formal statutory basis and remit will give the necessary authority and direction to drive forward civil court reform and other changes needed to the civil justice system.

Functions

31. It is suggested the Council should have the following general functions:

- to review the practice and procedure followed in civil proceedings in the Court of Session and sheriff court;
- to prepare and submit to the Lord President draft rules of procedure for the courts;
- in carrying out these functions, the Council should consider how to make the civil justice system more accessible, fair and efficient, and to also consider broader issues of dispute resolution and avoidance, for example how best to develop mediation; and
- where appropriate, to make other recommendations for change.

32. The proposals outlined in this paper envisage that the current arrangements for the making of rules of court would remain similar to those already in place, i.e. that rules would be made by the Court of Session. However, views are invited as to whether it would be appropriate for the body itself to make rules of court. Any such arrangement would require a suitable process, for example, it could be provided that rules could only be made with the Lord President's approval, and where they are signed by a certain number of specified members of the Council.

33. It is suggested the Council's role should include actively making recommendations to the Lord President and Scottish Ministers as to how the Scottish civil justice system may be improved.

34. In light of the proposed abolition of the AJTC, views are invited as to whether the scope of the Council's function to make recommendations in relation to the "civil justice system" should go wider than the courts and include administrative justice and tribunals.

35. In light of the pressures of criminal business on the Scottish court system, it is also considered appropriate that the Council should be able to take account of the criminal justice system, insofar as it impacts on civil business.

Questions

Q1. Do you agree or disagree that there should be a Scottish Civil Justice Council?

Q2. Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer

Membership and Chair

36. In order to provide the leadership and credibility necessary for such a body, it is proposed that the body should have a judicial chair, appointed by the Lord President.

37. It is proposed that Membership and appointments should include:*

Member(s)	Appointed by
-Members of the judiciary, from both the Court of Session and the Sheriff court	Lord President
-Members of the legal profession	Lord President
-A member of the Scottish Court Service	Lord President
-Persons with experience and knowledge of the tribunal sector -Persons with experience and knowledge of consumer affairs -Persons with experience and knowledge of the lay advice sector -Persons able to represent the interests of particular kinds of litigants, for example businesses or employees	Lord President, after consultation with Scottish Ministers
-At least one civil servant appointed by the Scottish Ministers	Scottish Ministers

*See Annex A for details of the membership of the existing rules councils in Scotland, and the Civil Justice Council and Civil Procedure Rule Committee in England and Wales

38. It is proposed that the Lord President should set the overall number of members that the Council should have, including the overall number to be drawn from each category (as specified in the first column of the above table). We envisage the Council would be made up of around 15 members.

39. It is proposed that in order to ensure flexibility, the Lord President and Scottish Ministers, each having consulted the other, should be able to appoint such other members as they consider appropriate.

40. As the body will have as its general objective the development of a fairer, more accessible system for all types of person, from across Scotland, it is envisaged that the membership where possible would be drawn appropriately to help foster equal opportunities and protect the interests of rural communities.

41. As is the case for the existing councils, members should be appointed for a three year period, and be eligible for re-appointment, provided they remain qualified to do so.

42. Members should be reimbursed for reasonable travelling and out of pocket expenses.

Questions

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

Q9. Should any other person / category of person be included in the membership? Please give reasons.

Q10. Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit? If not, why not?

Q11. Do you consider that members should receive expenses only, or should members be paid?

How will the Scottish Civil Justice Council Operate?

43. The Scottish Court Service would provide the secretariat and such administrative resources and accommodation as the Council might need to function.

44. It is envisaged that the Council would carry out much of its work through sub-committees and ad-hoc groups, which should be able to include non-members, supported by a secretariat provided by the Scottish Court Service.

45. In order to ensure a proactive and inclusive approach to civil justice matters, it is considered that it would be appropriate to require it, where appropriate, to consult, and work with, groups and bodies with an interest in the civil justice system; for example, the SLC and the Scottish Legal Aid Board. For example, there may be benefits in considering reforms to an area of substantive law, such as family law, alongside reforms to court procedures.

Accountability

46. It is proposed that the Council should be required to provide an annual report to the Lord President, setting out its progress over the year and its intended agenda for the following year. The body should also be required to lay a copy of the report before the Scottish Parliament.

47. The Lord President should be able to provide guidance to the Council on the performance of its functions. It is suggested both the Lord President and Scottish Ministers should be able to direct the Council to consider and advise upon any matter falling within its general remit. This will allow the Council to play a useful role in addressing any matters of concern about the functioning of the civil justice system, as they arise.

Questions

Q12. Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

Q15. Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

Q16. Do you have any other comments on the proposals outlined in this paper?

ANNEX A - OUTLINE OF CIVIL PROCEDURE BODIES IN SCOTLAND, AND ENGLAND AND WALES

Court of Session Rules Council

Established by: section 8 of the Court of Session Act 1988

Membership and appointment: as provided for by statute:

- The Lord President *ex officio*
- 2 (other) Court of Session judges, appointed by the Lord President
- 5 members of the Faculty of Advocates, appointed by the Faculty
- 5 solicitors, appointed by the Council of the Law Society of Scotland
- There is no provision for lay members, however the following are currently invited to attend meetings of the Council in light of their respective interests in the Council's work:
 - The Rt. Hon. Lord Gill, Lord Justice Clerk
 - The Hon. Lord Hodge (being the judge with responsibility for the administration of first instance business in the Court of Session)
 - The Principal Clerk of Session and Justiciary
 - The Deputy Principal Clerk of Session
 - A Representative of the Scottish Government Justice Directorate

Duration of Appointment: is three years and members are eligible for re-appointment, unless they lose their qualification for appointment.

Meetings: until 2008, when the Council decided to have more frequent meetings, it met twice a year. It now meets three times a year, in January, May and September.

Functions: The Council may frame rules regarding any matters which the Court could regulate by Act of Sederunt and submit those rules to the Court for approval.

Reporting: the Council does not publish a business plan or annual report.

Sheriff Court Rules Council

Established by: Section 33 of the Sheriff Courts (Scotland) Act 1971

Membership and appointments: as provided for at Section 33 of the Sheriff Courts (Scotland) Act 1971:

- 2 Sheriffs Principal (one of whom to be Chair)
- 3 Sheriffs
- 1 Advocate
- 5 Solicitors
- 2 Sheriff clerks
- 2 lay members, with a knowledge of the working procedures and practices of the civil courts, a knowledge of consumer affairs and an awareness of the interests of litigants in the sheriff courts. The Lord President is to consult the Scottish Ministers before appointing lay members.
- 1 member appointed by the Scottish Ministers who appears to them to be qualified for such appointment.
- All members (except the latter) are appointed by the Lord President.

Duration of Appointment: is three years and members are eligible for re-appointment, unless they lose their qualification for appointment.

Meetings: the Council should meet at intervals of not more than six months. A meeting may be requisitioned by the Chairman of the Council or any three members of the Council

Quorum: six members.

Functions, as set out at Section 34 of the Sheriff Court (Scotland) Act 1971:

- to review the procedure and practice in civil proceedings in the Sheriff Court. In fulfilling this function, the Council prepares draft rules regulating procedure and practice in the Sheriff Court and submits them to the Court of Session for approval.

Operation: The Council sets up *ad hoc* committees to deal with issues such as IT, mediation, and Ordinary Cause Rules. The Council may also invite representations on any aspect of the procedure or practice in civil proceedings in the sheriff court, for example by seeking views through consultation or via correspondence received.

Reporting: the Council publishes a business plan outlining aims and objectives and progress towards them.

Civil Justice Council in England Wales

48. The establishment of the Civil Justice Council (CJC) was recommended by Lord Woolf in his 1996 report on Access to Justice in England and Wales to help take forward his proposed reforms to civil court procedure. It is an Advisory Non-Departmental Public Body funded by the UK Ministry of Justice.

49. The CJC has a main Council body and a network of committees and working groups. These are supported by over 100 unpaid volunteers who among them have a wide range of civil justice experience and interests. The groups cover a wide range of areas, including: Alternative Dispute Resolution; Experts; Pre-Action Protocols; and costs and funding.

50. The UK Ministry of Justice commissioned Dr Jonathan Spencer to undertake an independent review of the CJC in February 2008. The review considered the role, performance and effectiveness of the CJC, and whether there was a continuing need for such a non-departmental body to carry out its role and functions. The report made recommendations to strengthen the effectiveness of the CJC, for example by broadening its membership towards court users, but concluded decisively that the concept of the Civil Justice Council (CJC) was sound and that it was the right form of body to carry out the particular functions conferred on it by the Civil Procedure Act 1997. The report found that one of the Council's significant strengths was its extensive and diverse practitioner expertise, and ability to foster constructive dialogue between divergent interests.

Established by: the Lord Chancellor under section 6 of the Civil Procedure Act 1997 (as amended by the Constitutional Reform Act 2005).

Functions: The Council has a statutory duty to:

- keep the civil justice system under review; consider how to make the civil justice system more accessible, fair and efficient;
- advise the Lord Chancellor and the judiciary on the development of the civil justice system;
- refer proposals for change in the civil justice system to the Lord Chancellor and the Civil Procedure Committee; and
- make proposals for research.

Meetings: at least three times a year.

Reporting: The Council publishes an annual report and business plan.

Membership and appointments: Membership must include at a minimum, certain categories of person(s). The Lord Chancellor, having consulted the Lord Chief Justice, decides how many members from these groups are required, and also how many other members the Council should have.

Category	Current members
Members of the judiciary:	2 Court of Appeal judges, <i>ex officio</i> 1 High Court judge 2 County Court judges
Members of the legal professions:	4 solicitors 1 Barrister
Civil servants concerned with the administration of the courts:	1 UK Ministry of Justice official, <i>ex officio</i> (to be appointed) 1 Legal Services Commission representative
Persons with experience in and knowledge of consumer affairs:	1 Which representative
Persons with experience and knowledge of the lay advice sector:	1 Citizens Advice representative 1 Citizens Advice Bureau representative
Persons able to represent the interests of particular kinds of litigants (eg business or employees):	2 Insurance representatives (1 currently vacant) 1 Trade Union representative 1 Chartered Business Institute representative
Other	1 Policy Director in a Solicitors' Practice 1 Alternative Dispute Resolution Provider 1 Legal Academic 1 Trustee of LawWorks

Civil Procedure Rule Committee in England and Wales

51. The Civil Procedure Rule Committee is an Advisory Non-Departmental Public Body, separate to the CJC, with the function to make rules of court for the Civil Division of the Court of Appeal, the High Court and the county courts. Although these are separate bodies, the CJC performs a complementary role, for example by carrying out research on whether the rules are operating as intended.

Established by: section 2 of the Civil Procedure Act 1997 (as amended by section 83 of the Courts Act 2003).

Functions: to make rules of court governing the practice and procedure in the civil division of the Court of Appeal; the High Court, and the county courts. It is required to do so with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed. Before making any rules the Committee is obliged to consult such persons as they consider appropriate and to meet.

Membership and appointments:

- The Head of Civil Justice* *ex officio*
- The Deputy Head of Civil Justice*, if there is one *ex officio*
- 2 or 3 judges of the Senior Courts
- 1 Circuit judge
- 1 or 2 district judges
- 1 person who is a Master (under Pt II, Sch 2 Senior Courts Act 1981)
- 3 persons with a senior courts qualification, at least one with experience in the county courts.
- 3 persons authorised to litigate in Senior Court proceedings, at least one with experience in the county courts
- 2 persons with experience in and knowledge of the lay advice sector or consumer affairs
- The judicial appointments are made by the Lord Chief justice, having consulted the Lord Chancellor
- The Lord Chancellor appoints the non-judicial members, having consulted the Lord Chief Justice. There Lord Chancellor is also required to consult relevant bodies when appointing members of the profession.

Meetings: The Committee met 3 times in 2009 and 5 times in 2010.

Quorum: There is no specified quorum, but at least 8 members are required to sign any Rules made.

Reporting: The Committee publishes an annual report and holds an annual public meeting.

*A member of the judiciary (currently the Master of the Rolls) appointed by the Lord Chancellor. The position was created in recognition of the need to provide consistency and an overview of work emanating from the Woolf reforms. There is currently a Deputy (Lord Justice Moore-Blick), although the appointment is not mandatory.

ANNEX B – CONSULTATION QUESTIONNAIRE

Q1. Do you agree or disagree that there should be a Scottish Civil Justice Council?

Agree Disagree No preference

Comments

Q2. Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

Agree Disagree No preference

Comments

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Yes No No preference

Comments

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

Yes No No preference

Comments

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

Agree Disagree No preference

Comments

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Agree Disagree No preference

Comments

Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer.

Yes No No preference

Comments

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

Yes No No preference

If yes, go to question 10.

Comments

Q9. Should any other person / category of person be included in the membership? Please give reasons.

Yes No No preference

Comments

Q10. Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit? If not, why not?

Agree Disagree No preference

Comments

Q11. Do you consider that members should receive expenses only, or should members be paid?

Expenses only Paid No preference

Comments

Q12. Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

Agree Disagree No preference

Comments

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Agree Disagree No preference

Comments

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

Yes No No preference

Comments

Q15. Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

Agree Disagree No preference

Comments

Q16. Do you have any other comments on the proposals outlined in this paper?

Yes No

Comments

ANNEX C - CONSULTATION ON THE CREATION OF A SCOTTISH CIVIL JUSTICE COUNCIL



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes

ANNEX D – THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses¹⁰. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

¹⁰ <http://www.scotland.gov.uk/consultations>

ANNEX E - LIST OF ORGANISATIONS BEING CONSULTED

Administrative Justice and Tribunals Council (AJTC)
Additional Support Needs Tribunal for Scotland (ASNTS)
Association of Commercial Attorneys
Association of Personal Injury Lawyers
Association of Scottish Community Councils

Brodies LLP
Burness LLP

Citizens Advice Scotland
Competition Commission
Consumer Focus Scotland
Convention of Scottish Local Authorities (COSLA)
Crown Office and Procurator Fiscal Service
Disability Rights Commission

Edinburgh Bar Association
Equal Opportunities Commission
Equality and Human Rights Commission

Faculty of Advocates
Faculty of Solicitors of the Highlands
Financial Services Authority
Friends of the Earth Scotland

Glasgow Bar Association
Govan Law Centre

Irwin Mitchell Solicitors

Lands Tribunal for Scotland
Law Commission for England and Wales
Law Society of Scotland
Legal Services Agency
Lord President of the Court of Session

McGrigors LLP
Members of the Scottish Parliament
Mental Welfare Commission
Mental Health Tribunal Scotland (MHTS)
Ministry of Justice
Money Advice Scotland

Northern Ireland Assembly
Northern Ireland Executive

Office of Fair Trading

Part-Time Sheriffs Association
Pensions Appeal Tribunal Scotland
Private Rented Housing Panel (PRHP)
Professor Alan Paterson of Strathclyde University

Regulatory Review Group
Royal Faculty of Procurators in Glasgow

Scottish Association of Law Centres
Scottish Child Law Centre
Scottish Court Service
Scottish Human Rights Commission
Scottish Justices Association
Scottish Law Agents Society (SLAS)
Scottish Law Commission
Scottish Legal Action Group (SCOLAG)
Scottish Legal Aid Board (SLAB)
Scottish Legal Complaints Commission (SLCC)
Scottish Local authorities
Scottish Mediation Network
Scottish MEPs
Scottish Paralegal Association
Scottish Parliament Justice Committee
Scottish Solicitors' Discipline Tribunal
Scottish Women's Aid
Shepherd and Wedderburn LLP
Sheriffs Association
Society of Chief Officers of Trading Standards
Society of Legal Scholars
Society of Local Authority Chief Executives and Senior Managers (SOLACE)
Society of Local Authority Lawyers and Administrators (SOLAR)
Society of Solicitor Advocates
Society of Solicitors in the Supreme Courts in Scotland
Solicitors Regulation Authority
STUC

The Law Society in England and Wales
The Law Society of Northern Ireland

Welsh Assembly Government
Which?
WS Society



**The Scottish
Government**

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