

# SCOTTISH CIVIL JUSTICE COUNCIL INFORMATION EVENT

## PARLIAMENT HOUSE, EDINBURGH

2 JULY 2015

Welcome to this evening's information event hosted by the Scottish Civil Justice Council. It is the first such event to be held since the Council was established by statute, a little over two years ago, on 28 May 2013.<sup>1</sup> An official launch event took place on 23 September 2013. The purpose of this evening is to provide an update on the Council's work in the period since its launch and to look ahead to see what it will be doing in the coming year.

The creation of the Council was a major step towards the implementation of civil courts reform, primarily in terms of the Courts Reform (Scotland) Act 2014, which received Royal Assent last November. Following the "Gill Review", and in the wider context of the Scottish Government's *Making Justice Work* programme, the Council forms an integral part of a systematic and integrated plan for reform, which is now being implemented across the justice system. With its well-rounded membership, which includes practitioners, judges, government and consumer representatives, selected appointees of the Lord President, and the chief executives of the Scottish Courts and Tribunals Service and Scottish Legal Aid Board, it is ideally placed to oversee the wide landscape of anticipated civil reform.

The Council is tasked<sup>2</sup> with keeping the civil justice system, and more particularly the practice and procedure of the Court of Session and sheriff courts in civil cases, under review. It does so with a view to making recommendations for the continuing development

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<sup>1</sup> Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, section 1.

<sup>2</sup> 2013 Act, s 2.

of the civil justice system.<sup>3</sup> A significant aspect of the Council's remit is thus the preparation of draft civil procedure rules.<sup>4</sup> Underlying its work, as a generality, are the principles that: the civil justice system should be fair, accessible and efficient; the rules should be clear, and as easy to understand as possible, assimilating the practices and procedures of the different courts where appropriate; and alternative dispute resolution should be promoted.<sup>5</sup>

The Council is required to lay its annual programme from 1<sup>st</sup> April, and its report of the year past, before Parliament.<sup>6</sup> The second annual report, and third annual programme, were both laid last May, and give a good indication of the nature of the Council's recent and forthcoming activities. For present purposes, I will attempt only an overview of the salient points. Full details of the Council's publications and meetings are available online.<sup>7</sup>

The work of the Council is divided amongst various committees<sup>8</sup>; six are established at present, each chaired by a Senator of the College of Justice. The titles of those committees – access to justice, costs and funding, family law, ICT, personal injury and 'rules rewrite' – give a flavour of the breadth of the undertaking encompassed within the overall remit. I am very grateful to the Council and Committee members who have given of their time to attend this evening and who will speak a little later about their achievements over the past year and their current projects in more detail.

In overview, the Council's recent work has paved the way for many reforms to be implemented from the beginning of the new legal year on 22 September 2015. These include

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<sup>3</sup> 2013 Act, s 3.

<sup>4</sup> 2013 Act, s 2(1)(c).

<sup>5</sup> 2013 Act, s 2(3).

<sup>6</sup> 2013 Act, s 5.

<sup>7</sup> <http://www.scottishciviljusticecouncil.gov.uk>

<sup>8</sup> 2013 Act, s 13.

the introduction of the all-Scotland specialist personal injury court<sup>9</sup> and the modified proceedings for judicial review<sup>10</sup>. New rules of court have been drafted in each area.<sup>11</sup> The Council is liaising with the Criminal Courts Rules Council on the creation of the Sheriff Appeal Court, which is due to begin exercising its criminal jurisdiction from the same date<sup>12</sup>. Civil jurisdiction is expected to follow in January 2016.<sup>13</sup> The new court will be presided over by Sheriff Principal Mhairi Stephen QC, with Sheriff Principal Craig Scott QC as Vice President<sup>14</sup>. Thereafter, in the Spring and Autumn of 2016 respectively, new rules should become available to provide for the new “simple procedure” in the sheriff court for cases not exceeding £5,000 in value, and the compulsory pre-action protocols in personal injury cases.<sup>15</sup> The rules rewrite project is generally ongoing, as a long-term (and perhaps unenviable) project of a dedicated committee, building on the original working group’s final report published in April 2015.<sup>16</sup>

Over the course of the coming year, the Council will continue to progress the civil court reforms envisaged in the Gill Review and the 2014 Act. Amongst the priority areas are lay representation for non-natural persons, vexatious proceedings, and the development and

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<sup>9</sup> The All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 is due to come into force on 22 September 2015.

<sup>10</sup> Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015/228 is due to come into force on 22 September 2015.

<sup>11</sup> *Ibid*; Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015.

<sup>12</sup> Act of Adjournment (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 is due to come into force on 22 September 2015.

<sup>13</sup> SCJC Annual Report 2014/15, p 8; SCJC Annual Programme 2015/16, p 21.

<sup>14</sup> <http://www.scotland-judiciary.org.uk/25/1442/Sheriff-Appeal-Court-appointments-confirmed>

<sup>15</sup> SCJC Annual Report 2014/15, p 9; SCJC Annual Programme 2015/16, pp 21 – 22.

<sup>16</sup> Final Report on the ‘*Making Justice Work 1*’ Rules Rewrite Project, available at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/final-report-of-the-rules-rewrite-working-group.pdf?sfvrsn=2>.

commencement of a framework for the structural review of “suites” of court rules.<sup>17</sup> In addition, the Council will consider the recommendations of the Taylor Review on the Expenses and Funding of Civil Litigation in Scotland, and the proposed approach to implementation outlined by the Costs and Funding Committee in April 2015.<sup>18</sup> Further challenges are presented, for the years ahead, by the Tribunals (Scotland) Act 2014, which has led to the formation of the combined Scottish Courts and Tribunals Service. It will expand the Council’s remit to the preparation of tribunal rules in due course.<sup>19</sup> Next year, the Council will begin preparations to take on the additional tribunal functions. In addition to its scheduled programme, the Council will continue to consider opportunities for procedural improvements in response to policy initiatives.

I would encourage you all to collect a copy of the Council’s Annual Programme, which is available here tonight, and to have a look at the Council’s website for further details of its forthcoming work. The process of reforming and maintaining our civil justice system is both challenging and rewarding. Above all, it is fundamental to our enjoyment of the legal rights and freedoms afforded to us by our substantive law. On the occasion of the Council’s launch, Lord President Gill, to whom the Council owes a particular debt of gratitude, observed<sup>20</sup> that “Scotland’s civil courts have not been subject to large scale reform for over a century. The creation of the Scottish Civil Justice Council will help to support civil courts reform and thereafter ensure that the system can be kept under systematic

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<sup>17</sup> SCJC Annual Programme 2015/16, p 22.

<sup>18</sup> Report on Implementation of the Report and Recommendations of Sheriff Principal Taylor’s Review of Expenses and Funding of Civil Litigation in Scotland, available at <http://www.scottishciviljusticouncil.gov.uk/publications/scjc-and-other-organisations'-publications>.

<sup>19</sup> Tribunals (Scotland) Act 2014, section 81 and schedule 9, esp paras 4 and 13.

<sup>20</sup> <http://www.scottishciviljusticouncil.gov.uk/docs/librariesprovider4/default-document-library/here.pdf?sfvrsn=0>

review and remain responsive to the changing needs of modern society.” I am pleased to say that the Council has proved itself to be more than capable of facing the formidable task before it. It will continue to strive for modern civil justice, as it was imagined by Lord Gill.

All that remains is for me to thank the members of the Council and its Committees for their invaluable participation in the Council’s activities to date. Their services and expertise are greatly appreciated. The Council is fortunate to have the support of a dedicated rules drafting team and secretariat, supported by the staff of the Lord President’s Private Office. Their excellent work is vital to the smooth running of the Council’s demanding schedule.

Thank you all for attending this evening.

Lord Carloway  
2 July 2015