



Scottish  
Civil Justice  
Council

# **Annual Programme 2013/14**

[www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)

© Crown copyright 2013

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit: [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-0-9929447-0-4

Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

Published by the Scottish Civil Justice Council

OCTOBER 2013

## CONTENTS

	Page
Introduction.....	1
The Scottish Civil Justice Council.....	2
Committees and Working Groups.....	6
Priorities.....	13
Resources.....	20
Governance.....	21
Working with Interested Parties.....	22
Business Plan 2013/14.....	23
Further Information and Contacts.....	35

## Introduction

### The Scottish Civil Justice Council

1. The Scottish Civil Justice Council (SCJC) was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. The Scottish Civil Justice Council replaces the Court of Session Rules Council and the Sheriff Court Rules Council. The new Council has taken over the rule drafting functions of those bodies and has a new, wider, role to advise the Lord President on the civil justice system in Scotland and make recommendations for reform.
2. The creation of a single civil rules council for Scotland was one of the recommendations of the Scottish Civil Courts Review. Many of the review recommendations will need new rules of court and the SCJC, which will have oversight of the entire civil justice system, will be responsible for taking these forward. It also has responsibility for keeping the civil justice system under constant review.

### Functions and powers

3. The Council's functions include:
  - keeping the civil justice system under review;
  - reviewing the practice and procedure followed in the Court of Session and in civil cases in the sheriff court;
  - preparing draft rules of procedure for the civil courts; and
  - advising and making recommendations on the development of and changes to the civil justice system in Scotland.
4. The Council has broad powers to help it carry out its functions, including the ability to make recommendations to the Scottish Ministers, conduct consultations and commission research. It is also able to take into account proposals for reform when preparing draft rules.

## Guiding principles

5. In carrying out its functions, the Council must have regard to the following principles:
- the civil justice system should be fair, accessible and efficient;
  - rules relating to practice and procedure should be as clear and easy to understand as possible;
  - practice and procedure in the civil courts should be as similar as possible, where appropriate; and
  - alternative methods of dispute resolution should be promoted, where appropriate.

## SCJC Members

### Chair



**The Right Hon. Lord Gill (Brian Gill)**

#### Lord President and Lord Justice General

Lord Gill was appointed Lord President and Lord Justice General in June 2012 having held the position of Lord Justice Clerk and President of the Second Division of the Inner House from November 2001.

### Ex officio members



**Eric McQueen**

#### Chief Executive, Scottish Court Service

Eric was appointed as Chief Executive of the Scottish Court Service (SCS) on 1 January 2013. The SCS supports justice by providing the people, buildings and services needed for the work of Scotland's courts, members of the judiciary, and the Office of the Public Guardian. The SCS has over 1400 staff and an annual expenditure of more than £100 million.

Eric joined the SCS in 2003 as Director for Grampian, Highland and Islands, before being appointed in 2006 as Executive Director Field Services with over-arching responsibility for all operational services throughout the SCS. He has been heavily involved in reforms of the justice system in Scotland in recent years, including unification of summary criminal courts and the wide-ranging changes to summary criminal justice.



**Lindsay Montgomery CBE**

**Chief Executive, Scottish Legal Aid Board**

Lindsay Montgomery joined the Scottish Legal Aid Board as Chief Executive on 1 July 1999. His background is in Government Finance, Audit and public administration. He has worked in several Government departments including the Scottish Office and HM Treasury. Prior to joining the Scottish Legal Aid Board he was Director of Resources at Scottish Natural Heritage.

Lindsay is a member of a range of bodies/groups involved in the administration of the justice system in Scotland and legal aid. These include the Scottish Government Justice Board and the Making Justice Work Programme Board. He was a member of the Policy Group which advised Lord Gill’s review of the Civil Courts and also a member of the Reference Group advising Sheriff Principal Taylor’s review of the Expenses and Funding of Civil Litigation in Scotland. He is a leading member of the International Legal Aid Group. Other roles include membership of the Public Service Reform Board, the Public Procurement Reform Board and Chairman of the Central Government Procurement Supervisory Board. He is Chairman of the Non Departmental Public Bodies Chief Executives’ Forum and is also Deputy Chairman of Scotland’s Charity Regulator OSCR. He is a Member of the Scottish Government Remuneration Group.



**Jan Marshall**

**Scottish Ministers’ appointee**

Jan Marshall has been a government lawyer since 1992 and in that time has held a variety of posts that have included litigation and advising the Scottish Government’s Health Directorates. She is the Head of Civil Law and Legal System Division within the Scottish Government’s Justice Directorate.

**Judicial members**



**The Right Hon. Lord Menzies (Duncan Adam Young Menzies)**

Lord Menzies was appointed a Judge of the Supreme Courts in 2001 and was appointed to the Inner House in February 2012. Lord Menzies is Deputy Chair of the Council.



**The Hon. Lord Tyre (Colin Jack Tyre CBE)**

Lord Tyre was appointed a Judge of the Supreme Courts in May 2010.



### **Sheriff Principal Mhairi M. Stephen (Sheriff Principal of Lothian and Borders)**

Sheriff Principal Stephen was appointed a temporary Sheriff in 1995 and became a resident sheriff in Edinburgh in 1997. On 9 May 2011 she was appointed Sheriff Principal for Lothian and Borders.



### **Sheriff Ian R Abercrombie QC**

Sheriff Abercrombie was admitted to the Faculty of Advocates in 1981 and was appointed as a QC in 1994. Sheriff Abercrombie has been a Sheriff since 2009 and is currently a resident Sheriff at Dunfermline Sheriff Court.

## **Advocate members**



### **James Wolffe QC**

Mr. Wolffe has been a member of the Faculty of Advocates since 1992 and a QC since 2007. He served as an advocate depute from 2007 until 2010. In 2013 he was elected Vice-dean of the Faculty of Advocates. His practice is primarily in the fields of public and commercial law.



### **Sarah Wolffe QC**

Sarah Wolffe is a member of the Faculty of Advocates with experience in Commercial Law, Administrative and Public Law, dispute resolution, and Tax. She has contributed to numerous publications including the Stair Memorial Encyclopaedia, MacGillivray on Insurance Law, and is the current Scottish editor of Mithani: Directors' Disqualification. Sarah is a former standing Junior Counsel to the Department of Trade and Industry.

## **Solicitor members**



### **Eric Baijal**

Mr Baijal is a Partner and head of litigation at BBM Solicitors. He is based primarily in the firm's Wick Office practising in the Sheriff Courts across the Highlands and Islands. He also has a significant Court of Session practice, with particular experience in the Commercial Court. Mr Baijal specialises in Commercial and Insolvency Litigation and previously practised in Dundee before moving to the far North.



### Duncan Murray

Mr Murray has been a Partner with Morton Fraser since 2002 and was appointed as a Part Time Sheriff in 2006. He is a former President of the Law Society of Scotland. He is currently a member of the Court of Session Rules Council and the Employment Appeal Tribunal User Group. He is accredited by the Law Society of Scotland as a Specialist in both Employment and Discrimination Law.

## Consumer representative members



### Ian Maxwell

Mr Maxwell is the National Development Manager for Families Need Fathers Scotland (FNF). FNF is a charity chiefly concerned with the problems of maintaining a child's relationship with both parents during and after family breakdown. He was previously seconded to the Scottish Government Transport Directorate as Manager of Smarter Choices, Smarter Places (SCSP), a sustainable travel demonstration programme involving infrastructure and promotional work with local authorities. Before that he was Deputy Director of One Parent Families Scotland. He is a founder and board member of the Bike Station charity.



### Lauren Wood

Miss Wood is Access to Justice Policy Officer at Citizens Advice Scotland. She is responsible for influencing decision makers and opinion formers in government, the public and private sectors and the media to ensure access to justice policy and legislation is framed in the best interests of Citizens Advice Bureaux (CAB) clients and consumers. Her role also involves developing and co-ordinating information on projects that enhance access to justice across the CAB in Scotland. She holds a Master of Laws in Law and Governance from Dundee University and volunteered at Family Mediation Scotland while completing her studies.

## LP members



### Employment Judge Joseph d'Inverno

Judge d'Inverno is currently (since 2002) an Employment Judge, sitting in Employment Tribunal (Scotland). He previously practised as a Solicitor Advocate since 1993 and as a Solicitor since 1983. He currently functions as one of eight "Judge Mediators" in Scotland. Judge d'Inverno is a former member of the Sheriff Court Rules Council. He is a serving officer of the Territorial Army.



### Professor Frances Wasoff

Professor Wasoff is Emeritus Professor of Family Policies at Edinburgh University. She is an Associate Director of the Centre for Research on Families and Relationships. She is a Board member of Citizens Advice Edinburgh. Her main research interests are in family studies, family policy, family law, and gender issues in social and public policy. Her research has focused especially on civil and family law in Scotland, the financial consequences of divorce and child support, and the empirical study of legal professionals and informal legal processes in Scotland.

## Meetings

6. The SCJC will meet 6 times a year. Future meeting dates are:

- Monday 18 November 2013
- Monday 13 January 2014
- Monday 10 March 2014
- Monday 12 May 2014
- Monday 30 June 2014

## Committees and Working Groups

7. The SCJC may set up committees and ad hoc working groups to assist it in carrying out its functions. The committees and groups which have either been or are in the process of being established are:

- Family Law Committee
- Personal Injury Committee
- Rules Rewrite Working Group
- Access to Justice Committee
- Information and Communications Technology (ICT) Committee

8. Details of the various SCJC committees and working groups which have either been established or are in the process of being established by the SCJC are provided below. In addition to the members, clerks of both the Court of Session and sheriff court attend committee meetings as observers.

## Family Law Committee

### Remit

In light of a) the Report of the Scottish Civil Courts Review b) Mr Justice Ryder's report in England and Wales entitled "Judicial proposals for the modernisation of family justice" c) the Supreme Court's decision in NJDB and (d) legislative reform in family law, to consider the procedure to be followed in family actions and children's referrals, with a view to ensuring that such actions are dealt with as expediently as possible. This includes enhanced judicial case management and consideration of the content of pleadings and judgments.

The Committee will take due account of the different circumstances of the sheriff court and the Court of Session whilst maintaining, where possible, consistency of overall approach. The Committee will make recommendations to the Scottish Civil Justice Council as to the policy which should be adopted and where appropriate will promulgate draft rules for their consideration.

### Members

The Hon. Lord Brailsford	Chair
Sheriff Principal Mhairi M. Stephen	Sheriff Principal of Lothian and Borders, SCJC member
Sheriff A Grant McCulloch	Sheriff, Kirkcaldy Sheriff Court
Sarah Wolffe QC	Advocate, SCJC member
Clair McLachlan	Solicitor, Russels Gibson McCaffrey
Stephen Brand	Solicitor, Thorntons
Morag Driscoll	Solicitor, Scottish Child Law Centre
Catriona Whyte	Scottish Legal Aid Board
Professor Margaret Ross	Head of the College of Arts and Social Sciences, University of Aberdeen
Simon Stockwell	Scottish Government

## Personal Injury Committee

### Remit

In light of a) the Report of the Scottish Civil Courts Review b) the personal injury proposals in the Court Reforms (Sc) Bill and c) legislative developments in personal injury legislation to consider the procedure to be followed in personal injury actions.

The Committee will take due account of the different circumstances of the sheriff court and Court of Session whilst maintaining, where possible, consistency in overall approach and use of language. The Committee will make recommendations to the Scottish Civil Justice Council as to the policy which should be adopted and where appropriate will promulgate draft rules for their consideration.

### Members

The Hon. Lord Jones	Chair
Sheriff Mackie	Sheriff, Edinburgh Sheriff Court
Sheriff Abercrombie QC	Dunfermline Sheriff Court, SCJC member
Amber Galbraith	Advocate
Maria Maguire QC	Advocate
Gordon Keyden	Solicitor, Simpson and Marwick
Fraser Simpson	Solicitor, Digby Brown
Alan Rogerson	Claims Manager, AVIVA
Catriona Whyte	Scottish Legal Aid Board
Hamish Goodall	Scottish Government

## Access to Justice Committee

The SCJC considers that an Access to Justice Committee should be established in early course and has agreed to the remit and membership of such a committee. It is anticipated that the Committee will meet at least once before the end of 2013. The Committee's remit is as detailed below. Membership will be announced in due course.

## Remit

The Committee's remit shall be to consider, in light of the recommendations in the Report of the Scottish Civil Courts Review, the implications of proposals for legal reform which may affect the civil justice system upon litigants and potential litigants in the Scottish civil courts, and in particular:

- a) to consider the practice and procedure to be followed in actions which are currently subject to small claims and summary cause procedure, and in due course the simple procedure proposed in the draft Court Reform (Scotland) Bill;
- b) to review the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session;
- c) to review the arrangements for lay representation and lay support in the sheriff court and the Court of Session;
- d) to review the information and guidance that is available to party litigants, lay representatives and lay support in the sheriff court and the Court of Session;  
and
- e) to review the arrangements for the use of Alternative Dispute Resolution methods in appropriate cases in the sheriff court and the Court of Session.

The Committee will have regard to initiatives underway in relation to the use of Alternative Dispute Resolution methods within the civil justice system, including any outwith the Scottish civil courts.

The Committee will take due account of the need to ensure that actions falling within its remit proceed through the courts as expediently as possible and at a cost proportionate to the sum or matter in dispute.

The Committee will take due account of the different circumstances of the sheriff court and the Court of Session whilst seeking to achieve, where possible, consistency of overall approach.

The Committee will make recommendations to the Scottish Civil Justice Council as to the policy which should be adopted in respect of matters falling within its remit and where appropriate will provide draft rules for the Council's consideration.

## ICT Committee

The SCJC considers that an ICT Committee should be established in early course and has agreed to the remit and membership of such a committee. It is anticipated that the Committee will meet at least once before the end of 2013. The Committee's remit is as detailed below. Membership will be announced in due course.

### Remit

The Committee's remit shall be to consider, in light of the recommendations in the Report of the Scottish Civil Courts Review and the current proposals for civil court reform affecting the management and conduct of business in the Scottish civil courts, how ICT can be used more effectively within the Scottish civil courts to ensure that business can be dealt with as expeditiously as possible, and in particular:

- a) what ICT solutions are required to support the implementation of proposed rules of court arising out of the proposed civil court reforms;
- b) how best to co-ordinate the introduction of proposed ICT systems with existing technologies; and
- c) how best to ensure that ICT systems are sufficiently flexible to accommodate continuing revisions to court rules and procedure in the longer term.

The Committee will have regard to initiatives underway in relation to the use of ICT within the justice system with implications for the civil courts.

The Committee will take due account of the different circumstances of the sheriff court and the Court of Session whilst seeking to achieve, where possible, consistency of overall approach.

The Committee will make recommendations to the Scottish Civil Justice Council as to the policies and arrangements which should be adopted and where appropriate will provide draft rules for its consideration.

## Costs and Funding Committee

The SCJC has agreed that a Costs and Funding Committee should be established to consider, among other things, the implications of the recommendations of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland. The Committee's remit and membership is currently under consideration.

### Rules Rewrite Working Group

A Rules Rewrite Working Group has been established to consider the methodology for approaching the Rules Rewrite project and consider the prioritisation of separate phases of the rules revisions. The Group is due to report in spring 2014.

#### Remit

The Rules Rewrite Working Group's remit is to:

- a) consider the vision and objective of the new rules;
- b) undertake a review of the approach that other jurisdictions have taken when undertaking similar projects such as England and Wales and Australia to establish if any lessons can be learned (research may require to be commissioned in respect of this);
- c) develop and submit to the SCJC a "rules rewrite methodology";
- d) create a "style guide" to underpin the drafting of the new rules (there requires to be consistency in approach to rule drafting for example, terminology, language, between the civil courts and across the different disciplines such as family and PI);
- e) agree the format and guidance for "drafting instructions" whether this be through the committee structure or the SCJC Secretariat; and
- f) develop an annual rules rewrite programme which enables specific phases of rules to be prioritised.

## Members

The Rt. Hon. Lord Gill, Lord President	Chair
The Rt. Hon. Lord Menzies Sheriff Principal CAL Scott Q.C	Deputy Chair, SCJC member Sheriff Principal of Glasgow and Strathkelvin
Kenneth Forrest Duncan Murray Jonathan Brown	Advocate Solicitor, SCJC member Office of the Scottish Parliamentary Counsel (OSPC), Scottish Government
Sarah Wolffe QC	Advocate, SCJC member (papers member)

## Secretariat

9. Secretariat for the SCJC is provided by the SCS.

<b>Secretary</b>	Roddy Flinn
<b>Deputy Secretary</b>	Ondine Tennant
<b>Policy Officers</b>	Lisa Gamble
	Neil Robertson
	Carmen Murray

10. Legal support is provided the Lord President's Private Office, which is staffed by government lawyers.

## Priorities

11. The SCJC will give particular focus to the following matters during 2013/14:

- preparation for the implementation of major justice system reform projects;
- consideration, and preparation for implementation, of new legislation;
- ongoing preparation of rules revisions necessary to implement primary and subordinate legislation and developments in case law (this is the 'care and maintenance' of the rules); and
- consideration of potential improvements to procedures, particularly in respect of those aspects of civil courts reform which can be taken forward without primary legislation.

## Justice System Reform

12. There are currently 3 major initiatives which will have a direct impact on the work of the SCJC over the course of the forthcoming year and beyond. These are:

- implementation of the Scottish Civil Court Review (SCCR) recommendations, including the forthcoming Court Reforms (Scotland) Bill;
- the recommendations of Sheriff Principal Taylor's Review on Expenses and Funding in Civil Litigation in Scotland; and
- the Tribunals (Scotland) Bill.

13. Given the level of legislative reform these initiatives are expected to give rise to (in terms of both primary and secondary legislation) this is anticipated to be the main focus of the forward work programme for the Council over the next 3-5 year period. As such, a large proportion of the SCJC's work will sit within the Scottish Government's *Making Justice Work* Programme (MJW), through which these, and other, reforms are being taken forward by the Scottish Government in conjunction with key justice organisations.

14. The programme consists of 5 projects: (1) delivering efficient and effective court structures; (2) improving procedures and case management; (3) enabling access to justice; (4) co-ordinating information technology and management information; and (5) establishing a Scottish Tribunals Service.

## *Civil Courts Reform and the Courts Reform (Scotland) Bill*

15. The Scottish Government conducted a public consultation on a draft Courts Reform (Scotland) Bill, to implement many of the recommendations of the SCCR, between May and June 2013. The Scottish Government has indicated that it intends to bring a Bill to the Scottish Parliament in early 2014.

16. The work of implementing the SCCR recommendations, including the Courts Reform (Scotland) Bill, sits within MJW project 1 (delivering efficient and effective court structures) and links to a number of other workstreams being taken forward under the programme, such as the Scottish Court Service's proposals for restructuring the court estate.
  
17. The draft Bill proposes major structural reform to change the way civil cases and summary criminal cases are dealt with by the Scottish courts. The key proposals in the draft Bill can be summarised as follows:
  - (a) redistribution of civil business from the Court of Session to the sheriff courts through increasing the privative jurisdiction of the sheriff court from £5,000 to £150,000;
  
  - (b) the creation of a new judicial tier (called "summary sheriffs") with jurisdiction in certain civil cases and summary criminal cases;
  
  - (c) the creation of a Sheriff Appeal Court to hear civil appeals from the sheriff courts and summary criminal appeals;
  
  - (d) the creation of a specialist personal injury court with an all-Scotland jurisdiction;
  
  - (e) improving procedures for judicial review within the Court of Session; and
  
  - (f) conferring new rule-making powers on the Court of Session to facilitate modernisation of procedures and encourage settlement.
  
18. The draft Courts Reform (Scotland) Bill is essentially an enabling Bill, leaving much of the detail of the reforms to be developed through court rules. In addition to the many procedural changes proposed by the SCCR (many of which are either provided for or enabled by the draft Bill), the SCCR also considered there was a potential need for a comprehensive revision of the rules of the civil courts, coupled with the adoption of enhanced judicial case management. In order to facilitate the wider implementation of civil courts reform, a "Rules Rewrite" project has therefore been initiated under the remit of the MJW Project Board 1.

19. The “Rules Rewrite” project has been commenced for the following reasons:

- (a) **The Reform Agenda:** The justice system in Scotland is subject to a major reform agenda which includes a once in a generation reform to the civil justice system as proposed in the SCCR.

Those reforms are predicated on taking a different philosophical approach to the operation of the civil courts which includes a shift towards the judiciary taking greater control over the pace and conduct of litigation, and adopting court procedures that are more proportionate to the sum or matter in dispute.

That will entail methodically working through the existing rules of court, and issuing updated rules that can better support the overarching objectives of delivering a modern civil justice system that is fit for the 21<sup>st</sup> century.

- (b) **Consolidation:** The current rules of court have arisen on a piecemeal basis, sometimes over several decades. There is a level of duplication and specialisation of rules which can add an unnecessary layer of complexity and cost to court proceedings. This is the inevitable result of having separate rule-making bodies with differing priorities operating over differing timelines.

There is a general recognition that significant benefit would flow from making those rules more accessible to all court users through a process of consolidation, harmonisation and simplification. That change would contribute directly towards the overarching MJW objectives which include having: “Court procedures that are as easy as possible to understand and access”.

20. The SCJC has established a Rules Rewrite Working Group (RRWG) to consider the methodology for approaching the rules rewrite and consider the prioritisation of separate phases of the rules revisions. This should support the development of an annual rules rewrite programme through which the new rules to implement civil courts reform can be staged and which will be balanced against the continuing need to make ongoing revisions to the rules in light of legislative change. The RRWG is due to report in spring 2014, enabling the Rules Rewrite Project to begin in earnest once the Scottish Government’s final legislative proposals for civil courts reform are known and the Courts Reform (Scotland) Bill has been introduced to the Scottish Parliament.

21. Given the scale and scope of the planned reforms it is considered essential that work should begin promptly on those matters which are capable of being addressed in early course even although the enabling legislation is still subject to parliamentary consideration. To that end, and complementing the work of the RRWG, the SCJC and its committees will consider whether there are discrete aspects of civil courts reform that might be capable of being taken forward prior to the commencement of the Rules Rewrite project.

*Tribunals (Scotland) Bill 2013*

22. The Scottish Government introduced the Tribunals (Scotland ) Bill 2013 to the Scottish Parliament in May 2013. The Bill provides for the creation of a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as Head of the Scottish Tribunals. The key reforms contained in the Bill are:
- (a) the creation of a two-tier structure for tribunals - a First-tier Tribunal for hearing;
  - (b) first decision cases and Upper Tribunal Scotland, primarily to hear appeals from the First-tier;
  - (c) to bring judicial leadership for tribunals under the remit of the Lord President;
  - (d) the creation of a new office, the President of the Scottish Tribunals, with responsibility for ensuring tribunal business runs effectively and efficiently; and
  - (e) the establishment of new independent appointment arrangements.
23. Of particular relevance to the SCJC are the provisions within the Bill which confer responsibility on the Court of Session for the making of tribunal rules and those which confer responsibility for preparation of those rules on the SCJC. The Bill provides for a mandatory committee of the SCJC for tribunals and for the membership of the SCJC to include the Tribunals President and a tribunals representative.
24. The Scottish Government has indicated that it does not intend to commence these provisions for a number of years, in order that the SCJC may focus on implementation of the forthcoming Courts Reform (Scotland) Bill without the additional functions in respect of tribunals and more particularly tribunal rules. The SCJC will nevertheless require to consider how it will prepare for these additional functions and whether there is any need for a rewrite of the tribunal rules (such as that being undertaken for the civil court rules). The Financial Memorandum accompanying the Tribunals (Scotland ) Bill 2013 suggests that the SCJC would not take on functions in respect of tribunals before 2017, in which case it is envisaged that this preparatory work would need to begin by 2016.

*Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland*

25. The Report of Sheriff Principal Taylor's Review of the Expenses and Funding of Civil Litigation in Scotland was published on 11 September 2013. The need for such a review was identified by the SCCR and it has significant implications for the SCJC.
26. Sheriff Principal Taylor has made a total of 85 recommendations. These are wide ranging and cover such matters as: recovery of judicial expenses; the employment of counsel in the sheriff court; fees for expert witnesses; the introduction of qualified one way costs shifting and increased availability of protective expenses orders; arrangements for Before the Event Insurance, speculative fee arrangements and damages based agreements; referral fees; and arrangements where litigation is funded by a third party.
27. As well as consideration of individual proposals, careful examination is required as to which recommendations might be taken forward through court rules (and which would therefore fall to the SCJC to take forward) and which might require primary legislation (and which would therefore need to be considered by the Scottish Government).
28. A key question for the SCJC in the short-term will be the extent to which particular recommendations have implications on the work underway to implement the Courts Reform (Scotland) Bill.
29. In addition, there are a number of recommendations relating specifically to the role and functions of the SCJC. This includes a proposal that the SCJC should form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses (which is currently carried by the Lord President's Advisory Committee).
30. In the longer term, as identified in Sheriff Principal Taylor's report, the Scottish Civil Justice Council will have a role in monitoring implementation of any of his recommendations.
31. The SCJC will consider the full range of Sheriff Principal Taylor's proposals (some of which might require amendment of the SCJC's statutory functions by primary legislation), giving particular focus in the short term to the implications of these on its current programme of work and its role in the longer term.

**Consideration, and preparation for implementation, of new legislation**

32. In addition to the work underway in respect of the major justice system reforms identified above, particular consideration requires to be given to primary and EU legislation with regard to the potential need for new, or amendments to, rules.

33. The SCJC considers Scottish, UK and EU legislation and works with the 3 UK jurisdictions to discuss the co-ordination of consequential amendments to rules with implementation timescales. The scale of these projects can vary from minor and technical consequential amendments to rules, to significant changes to existing rules or the introduction of brand new procedures. The areas of work which are expected to be of particular significance (either in terms of the potential impact for court users and practitioners or on the workload of the SCJC) in this regard are as follows.

#### **Bills before the Scottish Parliament**

Bankruptcy and Debt Advice Bill  
 Children and Young People Bill  
 Marriage and Civil Partnership Bill  
 Regulatory Reform Bill  
 Scottish Independence Referendum Bill  
 Tribunals Bill

#### **Bills to be introduced to the Scottish Parliament in 2013/14**

Bankruptcy Consolidation Bill  
 Conclusion of Contracts Bill  
 Courts Reform Bill  
 Damages Bill  
 Housing Bill  
 Licensing Bill  
 Mental Health and Adults with Incapacity Amendment Bill

#### **UK legislation**

Intellectual Property Bill  
 Consumer Rights Bill  
 Third Parties (Rights Against Insurers) Act 2010

#### **Ongoing rules revisions necessary to implement primary and subordinate legislation and developments in case law**

34. In addition to the major areas of work identified above, the SCJC has a continuing function to review rules in light of legislative changes. The work underway in this regard is detailed in the relevant section of the Business Plan (at pages 23-34).

35. The SCJC will be proactive in relation to legislative reform in order that due consideration may be given to draft rules in accordance with agreed implementation timetables. With that in mind, the SCJC secretariat will undertake a monthly review of the legislative programmes with the aide of LEGIT (the SCS Legislative and Information Tracker (LEGIT) through which current legislation with an impact for the courts is monitored) and the policy and legislation branch of the Scottish Court Service.
36. Changes to practice and procedure may also be required in light of developments in case law at Scottish, UK and European level. The SCJC is currently giving consideration to such matters as the judicial rate of interest following the decision of the Inner House in *Farstad AS v Enviroco Limited* and to intimation of child protection orders following the decision in *NJ and EH v The Lord Advocate and Others*.

### Consideration of improvements to procedures

37. The SCJC will consider changes to practice and procedure in response to policy initiatives, by specific request, or of its own accord. Proposals which are currently being considered by the SCJC and its committees include: proposal from the Scottish Government to extend simplified divorce proceedings to cover cases where there is a child under 16 and there is no dispute as to the arrangements for the care of the child; and amendments to the rules to clarify the procedure to be followed in respect of recovery of documents.
38. In light of the programme of civil courts reform, the SCJC will also identify and give particular consideration to those aspects of the recommendations of the Report of the Scottish Civil Courts Review which can usefully be begun prior to the introduction of the Courts Reform (Scotland) Bill. This includes reviewing the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session and, on a similar basis, the arrangements for lay representation and lay support.

## Resources

SCJC Resource Allocation 2013/14		
Category	Description	£
Staffing (Secretariat)	Deputy Secretary 2 Policy Officers Administration	179,000
Staffing (Drafting)	2.2 (Full Time Equivalent) Solicitors	153,000
Consultation and Research	Public consultations can be dealt with largely electronically, however, provision is included in order that independent advice can be sought to analyse responses, or undertake surveys / structured interviews / consultation events etc.  Occasional research may be commissioned directly from subject matter experts to support some elements of the work programme.	20,000
General Expenses	Any other general costs of running the committee e.g. stationery etc.	10,000
IT	IT costs for on-going maintenance and support of the SCJC website.	5,000
Expenses	Reimbursement of SCJC and committee members' Travel & Subsistence, additional expenditure and financial loss.	19,000
Publishing	Publication of documents.	10,000
Recruitment and Training	Ongoing recruitment of and training for new Council members and/or Secretariat staff.	10,000
Venue Hire	Occasional venue hire may be required for conference events, facilitated workshops etc.	10,000
<b>Total staffing</b>		<b>332,000</b>
<b>Total other</b>		<b>84,000</b>
<b>TOTAL</b>		<b>416,000</b>

39. The SCS has a duty (under section 62 of the Judiciary and Courts (Scotland) Act 2008) to provide property, services and staff as required for the SCJC. The staffing complement, which includes the Secretariat and legal support from the Lord President's Private Office, are provided by the Judicial Office for Scotland (a distinct arm of the SCS, which provides support to the judiciary). The costs attached to staffing the SCJC amount to approximately £332,000. The SCJC has been allocated an additional £84,000 during 2013/14 to assist it in carrying out its functions. The SCJC's budget allocation is subject to review by the SCS.
40. In addition to the resources described above, it is intended that a team of legal drafters will be recruited to draft the rules required to implement civil courts reform, once the Courts Reform (Scotland) Bill is introduced to Parliament.

## Governance

41. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ("the 2013 Act") sets out the statutory framework for the SCJC, with direction and oversight of the SCJC, in general terms, resting with the Lord President.
42. Within the framework of the 2013 Act, the SCJC has broad powers to regulate its own proceedings and those of its committees. To that end, it has adopted Standing Orders which set out how the Council and its committees will operate and which include a Code of Conduct for members. Membership of SCJC committees is set by the SCJC and committees operate within their remits as set by the SCJC upon their establishment. Committees provide regular reports on their activity to the SCJC and make recommendations in respect of policy or draft rules when appropriate.

## Transparency

43. Each year, the SCJC must prepare, and lay before the Scottish Parliament, an annual programme setting out its objectives and priorities and an annual report on those activities. The 2014/15 programme will be prepared by 31 March 2014 and be combined with the annual report for 2013/14, in accordance with section 5 of the 2013 Act.
44. Civil court rules are laid before the Scottish Parliament and are subject to parliamentary scrutiny (although the majority are not subject to the approval of or annulment by Parliament) and once made by the Court of Session are considered and reported on by the Delegated Powers and Law Reform Committee. This scrutiny will be of assistance to the SCJC in the further preparation, and reviewing of, draft rules.
45. The SCJC operates in an open and transparent manner and is subject to the provisions

of the Freedom of Information (Scotland) Act 2002. The SCJC has adopted the Scottish Information Commissioner's Model Publication Scheme and published a guide to information in May 2013. The SCJC provides statistical returns to the Commissioner regarding its handling of requests on a regular basis.

46. The SCJC will conduct regular reviews of its performance and working arrangements as part of the preparation of its annual report.

### *Making Justice Work Programme*

47. Given that a large proportion of the work of the SCJC is overseen by the Scottish Government's MJW Programme, the separate arrangements in place for governance of that programme should be noted. The programme has a supervisory board, whose role it is to ensure that the justice reform projects within the programme are carried out and the expected benefits delivered. Its membership comprises representatives of: the Scottish Government's Justice Directorate; the Scottish Court Service; the Crown Office and Procurator Fiscal Service; the Scottish Legal Aid Board; members of the judiciary; the Association of Chief Police Officers in Scotland (ACPOS); Consumer Focus Scotland, the Scottish Tribunal Service and Professor Richard Susskind.
48. The Secretary to the SCJC is represented on the Making Justice Work Project Board 1 (Delivering efficient and effective court structures) under which the majority of civil courts reform is being taken forward. The MJW programme features as a standing agenda item at SCJC meetings.

### **Working with interested parties**

49. The SCJC recognises the importance of working with other justice organisations and parties with an interest in the civil justice system. The SCJC will seek to engage with these groups and individuals and will draw from their experience through its committees and working groups and otherwise (through informal or targeted consultation) where appropriate.

## Business Plan 2013/14

Subject	Action	Lead	Key dates
<b>JUSTICE SYSTEM REFORM</b>			
Courts Reform (Sc) Bill	Consideration of Bill once introduced to Parliament	SCJC (with aspects of delegated to relevant committees where appropriate)	Bill's introduction to Parliament anticipated early 2014.
Rules Rewrite Project	Develop Rules Rewrite methodology: <ul style="list-style-type: none"> <li>• consider objective and vision of new rules;</li> <li>• review approaches undertaken in other jurisdictions;</li> <li>• develop annual rules rewrite programme enabling phases of rules to be prioritised;</li> <li>• create 'style guide' to underpin drafting of new rules; and</li> <li>• agree format and guidance for instructing drafting of rules.</li> </ul> This includes rules to implement Courts Reform (Sc) Bill and wider SCCR recommendations.	Rules Rewrite Working Group (RRWG)	Spring 2014.

Subject	Action	Lead	Key dates
	This work will inform the SCJC 2013/14 annual programme and the forward work of the SCJC committees.		
Rules Rewrite Project	Consideration to be given to ICT systems required to support new rules and how to co-ordinate these with existing systems. To some extent this work will be interdependent with that of the RRWG.	ICT Committee (ICTC)	ICTC to be established by end 2013.  (RRWG due to report spring 2014).
Tribunals (Sc) Bill 2013	Consideration of Bill during its Parliamentary passage.	SCJC (Secretariat to monitor)	Bill's final parliamentary stage expected to complete by early 2014.
Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland	Initial consideration of the recommendations of the Review. Particular consideration will be given to implications for implementation of civil courts reform and specific recommendations relating to the SCJC.	SCJC	By end 2013.

Subject	Action	Lead	Key dates
<b>NEW LEGISLATION</b>			
<p>Consideration of new and recent legislation</p>	<p>In addition to work underway in respect of the major justice system reforms identified above, particular consideration will require to be given to the following legislation with regard to the potential need for consequential amendments to rules:</p> <p><i>Bills before the Scottish Parliament:</i></p> <p>Scottish Independence Referendum Bill</p> <p>Children and Young People Bill</p> <p>Regulatory Reform Bill</p> <p>Bankruptcy and Debt Advice Bill</p> <p>Marriage and Civil Partnership Bill</p> <p><i>Bills to be introduced to the Scottish Parliament in 2013/14:</i></p> <p>Bankruptcy Consolidation Bill</p> <p>Conclusion of Contracts Bill</p>	<p>SCJC and relevant committees</p>	<p>SCJC Secretariat will liaise with relevant policy teams as to timescales for implementation.</p>

Subject	Action	Lead	Key dates
	<p>Damages Bill</p> <p>Housing Bill</p> <p>Licensing Bill</p> <p>Mental Health and Adults with Incapacity Amendment Bill</p> <p>It is anticipated that the Bankruptcy Consolidation Bill, Housing Bill and the Mental Health and Adults with Incapacity Amendment Bill will have particular implications for the work of the SCJC.</p> <p><i>UK legislation</i></p> <p>Third Parties (Rights Against Insurers) Act 2010</p> <p>Intellectual Property Bill,</p> <p>Consumer Rights Bill</p>		

Subject	Action	Lead	Key dates
<b>RULES REVISIONS</b>			
Policing and Crime Act 2009	Consequential amendments to sheriff court rules required by commencement of provisions of Policing and Crime Act 2009 amending Proceeds of Crime Act 2002.	SCJC	Considered by the SCJC at September meeting.
Procedure for the recovery of documents and commission and diligence	Amendment of Ordinary Cause Rules to provide in cases where commission and diligence is followed for two sets of rules (i) for where there is no party litigant and the party requesting the documents should receive those documents, and (ii) for where there is a party litigant or confidentiality is claimed, where the sheriff clerk should receive those documents. Consideration to be given as to whether similar provision will require to be made in equivalent procedures in the other rules of court.	Personal Injury Committee (PIC)	Draft rules and recommendations to be submitted to SCJC in due course.
<i>NJ and EH v The Lord Advocate and Others</i>	<p>Current rule 3.31(1) of the 1997 Act of Sederunt provides that on receipt of an application for a child protection order that the sheriff having considered the grounds of the application and the supporting evidence, should forthwith grant or refuse it.</p> <p>The case does however raise a question as to whether consideration should be given as to whether the current rule should make provision allowing the sheriff to order intimation of an application to relevant persons and affording them the opportunity to make representations prior to it being granted or refused.</p>	Family Law Committee (FLC)	Recommendation to be made to SCJC in due course.

Subject	Action	Lead	Key dates
Caveats under the Land Registration etc (Scotland) Act 2012	Section 67 of the Act specifies certain civil proceedings in which a party to the proceedings may at any time while they are in dependence apply to the court for warrant to place a caveat on the title sheet of a plot of land to which the proceedings relate. The civil proceedings can relate to those raised in either the sheriff court or the Court of Session.	SCJC	Implementation timetable to be confirmed.
Reporting Restrictions	Consultation on draft Rules of the Court of Session findings to be considered and thereafter consideration to be given as to whether similar rules are required in the other rules of court.	SCJC	Consultation closes 2 October 2013. Responses and analysis to be published thereafter.
Victims and Witnessess (Sc) Bill 2013	Consequential changes to in relation to Court of Session and Sheriff Court Rules due to the age of a child witness being raised from under 16 to under 18 in civil cases.	SCJC	Draft rules to be considered by SCJC in anticipation of commencement following Bill's enactment (est. by March 2014).
Judicial Rate of Interest	The SCJC is giving consideration to the judicial rate of interest following the decision of the Inner House in <i>Farstad AS v Enviroco Limited</i> [2013]	SCJC	No set timescale.
Civil Recovery Investigations	New rules required for the implementation of new section 408A of the Proceeds of Crime Act 2002 when the relevant section of the amending legislation (Crime and Court Act 2013) comes into force later in the year.	SCJC	By end 2013.

Subject	Action	Lead	Key dates
Postal Services Act 2011	Prospect that rules may be required for the system of special administration under Part 4 of the Act.	SCJC	No action at present.
<b>IMPROVEMENTS TO PROCEDURES</b>			
Extension of Simplified Divorce	Consideration to be given to the Scottish Government's suggestion that Simplified Divorce proceedings be extended to cases where there are children under 16.	FLC	Timescales tbc. Further consideration to be given following the SG's planned consultation (expected in early course).
Personal Injury Actions	Review the practice and procedure to be followed in personal injury actions. This will include, in due course, rules for the specialist Personal Injury court proposed in the Courts Reform (Sc) Bill.	PIC	Ongoing. Recommendations to be made to SCJC in due course.

Subject	Action	Lead	Key dates
Lay representation, lay support and party litigants.	<p>Review the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session;</p> <p>Review the arrangements for lay representation and lay support in the sheriff court and the Court of Session; and</p> <p>Review the information and guidance that is available to party litigants, lay representatives and lay support in the sheriff court and the Court of Session.</p>	Access to Justice Committee (AtJC)	Ongoing. Recommendations to be made to SCJC in due course.
Small claims and summary cause procedure	Consideration of the practice and procedure to be followed in actions which are currently subject to small claims and summary cause procedure, and in due course the simple procedure proposed in the draft Court Reform (Scotland) Bill.	AtJC	Ongoing. Recommendations to be made to SCJC in due course.
Alternative Dispute Resolution	Review the arrangements for the use of Alternative Dispute Resolution methods in appropriate cases in the sheriff court and the Court of Session.	AtJC	Ongoing. Recommendations to be made to SCJC in due course.

Subject	Action	Lead	Key dates
Ongoing consideration of policy initiatives	<p>The SCJC will monitor the development of policy with implications for the civil justice system, including the following:</p> <ul style="list-style-type: none"> <li>UK MoJ Consultation Damages Act 1996: Discount Rate consultation</li> <li>Scottish Government Consultation on Treatment of Civil Appeals from the Court of Session</li> <li>DWP Consultation: Strengthening Families, promoting parental responsibilities</li> <li>Scottish Government Bar Reporters Working Group</li> </ul>	SCJC and relevant Committees	SCJC Secretariat will liaise with relevant policy teams as to relevant timescales and revert to the SCJC as appropriate.
<b>COMMUNICATIONS AND ENGAGEMENT</b>			
Communications Strategy	Implementation of communications and engagement strategy	SCJC Secretariat	Ongoing.
SCJC Official Launch	Launch event arranged, with an address by the Cabinet Secretary for Justice, following establishment of the SCJC on 28 May 2013.	SCJC Secretariat	23 September 2013.
Engagement with justice organisations	Planned activities to foster working relationships and raise awareness of the SCJC's work. This includes solicitor member attendance at Law Society of Scotland Civil Justice Committee and a joint event for SCJC	SCJC Secretariat	Early 2014.

Subject	Action	Lead	Key dates
	and SCS Board members.		
SCJC website	Development of the SCJC website, including dedicated committee webpages, improvements in branding, site navigation, encouragement and incorporation of feedback.	SCJC Secretariat	By December 2013.
<b>DEVELOPMENT, TRAINING AND GUIDANCE</b>			
Orientation days	Series of court visits for SCJC members to see civil business in action.	SCJC Secretariat	Winter 2013 to spring 2014.
Freedom of Information Guidance	Guidance on Freedom of Information regime and how to handle information to be developed for SCJC and committee members.	SCJC Secretariat	By end 2013.
<b>CORPORATE ACTIVITY</b>			
Establishment of additional committees	The SCJC has agreed that an Access to Justice, an ICT Committee and a Costs and Funding Committee should be established in early course.	SCJC Secretariat	By end 2013.
Guiding principles	Consideration to be given to how the SCJC will give regard to its guiding principles.	SCJC	By spring 2014.
Monitoring of Legislation	Scrutiny of current and anticipated Bills before Scottish and UK Parliaments in respect of consequential amendments to rules and potential impact on SCJC work programme. In addition, Members'	SCJC Secretariat will consider	Ongoing. The SCJC Secretariat will liaise with UK and Scottish

Subject	Action	Lead	Key dates
	Bills and Scottish Law Commission activity will be kept under review. This includes: the SLC Judicial Factors (Sc) Bill and the Apologies (Sc) Bill and the Inquiries into Deaths (Sc) Bill (both Members' Bills).	in the first instance.  Detailed consideration and rules which may be required in consequence will be for the SCJC or relevant committees.	Government officials to discuss implementation timescales in order to co-ordinate the SCJC's work for year 2014/15.
Monitoring of court judgments	Monitoring of court decisions and developments in case law at Scottish, UK and European level in respect of implications for court rules.	SCJC Secretariat in conjunction with LPPO	Ongoing.
Annual business programme	The SCJC is under a statutory obligation to prepare an annual business programme for 2014/15 by 31 March 2014 and to lay the programme before parliament. It is intended to include a review of the SCJC's structure and operations as part of the annual report. This includes a review of SCJC effectiveness of SCJC communications and a review of	SCJC Secretariat	To be submitted to SCJC by March 2013.

Subject	Action	Lead	Key dates
	the SCJC committee structure and membership.		
Annual Report	The SCJC is under a statutory obligation to publish an annual report for 2013/14 as soon as practicable after 31 March 2014 and to lay the report before parliament.	SCJC	Preparation to begin early 2014 for SCJC consideration in spring 2014.
Recruitment of members	Consideration to be given as to whether there is a need for additional representation on the SCJC.	Lord President, with consideration by SCJC members	Ongoing, however, specific consideration should be given to this issue by March 2014 in light of recruitment timescales and the need to stagger appointments to ensure continuity.
Committee membership and structure	Consideration to be given to overall structure and composition of committees and their remits to ensure an appropriate range of interests and experience are represented and that the work of the SCJC can be appropriately delegated to its committees.	SCJC	Ongoing, however, specific consideration should be given to this issue in early 2014 alongside preparation of the 2014/15 business programme.
Records Management Plan	Records Management Plan to be developed	SCJC Secretariat	At earliest opportunity.

## Further information and contacts

50. Full information about the SCJC and its activities are available at [www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk). The website is updated regularly with news about the SCJC and provides full details of Council and committee meetings, SCJC publications, draft rules under consideration and rules which have been recently made.

51. Contact details for the SCJC are as follows:

Email                [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

Telephone:        0131 240 6769

Post:                Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

---

© Crown copyright 2013

ISBN: 978-0-9929447-0-4

October 2013

Scottish Civil Justice Council  
Parliament House  
Parliament Square  
Edinburgh  
EH1 1RQ



Scottish  
Civil Justice  
Council

[www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)