



Scottish  
Civil Justice  
Council

# Annual Programme 2014/15

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## 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, replacing the Court of Session Rules Council and the Sheriff Court Rules Council. It is responsible for preparing draft rules of procedure for the Court of Session and for civil proceedings in the sheriff court. It also has the function of providing advice and making recommendations to the Lord President on the development of the civil justice system in Scotland.
2. The creation of a single civil rules council for Scotland was one of the recommendations of the Scottish Civil Courts Review, on which the proposals contained in the Courts Reform (Scotland) Bill, recently introduced to the Scottish Parliament, are based. Implementation of the Bill will require many procedural changes, through new rules of court. The SCJC will be responsible for preparing the majority of these new rules.

### 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

### Chairman



**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 the 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**



**Andrew Stewart QC**

Andrew Stewart QC has been a member of the Faculty of Advocates since 1996 and a QC since 2009. He served as an advocate depute from 2009 until 2013.

His practice is primarily in the fields of commercial and public law. He is the editor of Session Cases. Andrew is a former Standing Junior Counsel to the Department of Trade and Industry and a former Clerk of the Faculty of Advocates.



**Kenneth Forrest**

Ken Forrest was a solicitor in private practice for over 20 years. He has been a member of the Faculty of Advocates since 2000. He specialises in Immigration and Asylum law and practice. He also sits as a Justice of the Peace in the Sheriffdom of South Strathclyde Dumfries and Galloway.

**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 was previously 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, 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:

- 10.00 am, Monday 30 June 2014
- 10.00am, Monday 29 September 2014
- 10.00am, Monday 24 November 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 been established are:

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

8. The remits and membership of each of these groups is provided below. In addition to the members, SCS staff 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 McCulloch	Sheriff, Kirkcaldy Sheriff Court
Lynda Brabender	Advocate
Clair McLachlan	Solicitor, Russells Gibson McCaffrey
Stephen Brand	Solicitor, Thorntons
Morag Driscoll	Director, 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	Sheriff, Dunfermline Sheriff Court, SCJC member
Amber Galbraith	Advocate
Maria Maguire QC	Advocate
Gordon Keyden	Solicitor, Simpson and Marwick
Fraser Simpson	Solicitor, Digby Brown
Ronnie Conway	Solicitor, Bonnar & Co.
Alan Rogerson	Claims Manager, AVIVA
Catriona Whyte	Scottish Legal Aid Board
Hamish Goodall	Scottish Government
Sheriff Principal Mhairi M Stephen	Sheriff Principal of Lothian and Borders, SCJC member (papers member)

## Access to Justice Committee

### 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 Courts 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.

## Members

The Hon. Lady Wise	Chair
Sheriff Arthurson	Sheriff, Edinburgh Sheriff Court
Ruth Crawford QC	Advocate
Kenneth Forrest	Advocate, SCJC member
Ronnie Conway	Solicitor, Bonnar & Co.
Catherine Molloy	Solicitor, East Lothian Council
Employment Judge d'Inverno	Employment Tribunal (Scotland), SCJC member
Prof. Frances Wasoff	University of Edinburgh, SCJC member
Lauren Wood	Citizens Advice Scotland, SCJC member
Ian Maxwell	Families Need Fathers, SCJC member
Colin Lancaster	Scottish Legal Aid Board

Denise Swanson

Scottish Government

<b>ICT Committee</b>
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**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 expediently 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.

**Members**

The Hon. Lord Tyre  
Sheriff Abercrombie QC

Chair, SCJC member  
Sheriff, Dunfermline Sheriff Court, SCJC member

Gavin MacColl  
Duncan Murray

Advocate  
Solicitor, Morton Fraser, SCJC member

Lauren Wood

Citizens Advice Scotland, SCJC member

Craig McCorkindale

Scottish Court Service

Marie-Louise Fox

Scottish Legal Aid Board

Stuart Duncan

Scottish Government

Lawrie McDonald

Director of IT, Scottish Court Service (papers member)

## Costs and Funding Committee

### 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 and other initiatives which may affect the cost and funding of civil litigation, and in particular to:

- a) consider the recommendations of Sheriff Principal Taylor's review of the Expenses and Funding of Civil Litigation in Scotland in consultation with the Lord President's Advisory Committee, where appropriate;
- b) consider rules to support the increase in the privative limit and the introduction of the simple procedure, as proposed in the draft Courts Reform (Scotland) Bill, in particular with regard to the calculation in each case of the value of a claim; and
- c) consider, in light of the Inner House decision in [\*Farstad Supply AS v Enviroco Limited\*](#), the judicial rate of interest.

The Committee will take due account of the need to ensure that actions proceed through the civil 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.

### Members

The Hon. Lord Burns	Chair
Sheriff Hughes	Sheriff, Dundee Sheriff Court
Dr Charles Stoddart	Retired Sheriff
James Mure QC	Advocate
Eric Baijal	Solicitor BBM Solicitors, SCJC member
Lindsay Montgomery CBE	Chief Executive, Scottish Legal Aid Board, SCJC member

Stella Smith  
 Julia Clarke  
 Alan Rogerson

Scottish Government  
 Principal Advocate, Which?  
 Claims Manager, AVIVA

### Rules Rewrite Working Group

A Rules Rewrite Working Group was established to consider the methodology for approaching the Rules Rewrite project and consider the prioritisation of separate phases of the rules revisions. The SCJC is giving consideration to the extension of the Group's remit and membership following the publication of its final report in summer 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	Deputy Chair, SCJC member
The Hon. Lady Wolffe	Judicial member
Sheriff Principal CAL Scott QC	Sheriff Principal of Glasgow and Strathkelvin

Andrew Stewart QC	Advocate, SCJC member
Kenneth Forrest	Advocate, SCJC member
Duncan Murray	Solicitor, SCJC member
Prof. Frances Wasoff	University of Edinburgh, SCJC member
Jonathan Brown	Office of the Scottish Parliamentary Counsel (OSPC), Scottish Government

## 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>	Anne Hampson 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 2014/15:

- preparation for the implementation of major justice system reform projects, particularly implementation of civil courts reform;
- 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 years. These are:

- implementation of the Scottish Civil Court Review (SCCR) recommendations, including implementation of the Court Reforms (Scotland) Bill;
- the recommendations of Sheriff Principal Taylor's Review on Expenses and Funding of Civil Litigation in Scotland; and
- the Tribunals (Scotland) Act 2014.

13. During 2014/15, the SCJC will give particular priority to these justice reform projects, with focus to be given to the preparation of the rules required for implementation of civil courts reform and the consolidation, simplification, and harmonisation of the rules of the civil courts in Scotland (under the Rules Rewrite Project).

14. 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 sits 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.

15. The programme consists of 6 projects: (1) Effective Courts and Tribunals; (2) Improving Procedures and Case Management; (3) Access to Justice; (4) Justice Digital Strategy; (5) Scottish Tribunals; and (6) Parole Change.

16. In addition to the work underway in relation to these major justice system reforms, the following matters will form part of the SCJC's ongoing work in carrying out its statutory functions:

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

17. The Scottish Government introduced the Courts Reform (Scotland) Bill to the Scottish Parliament on 6 February 2014.
18. 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.
19. The 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 contained in the 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.
20. The 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 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 auspices of the MJW Programme.

21. 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 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”.

22. The SCJC has established a Rules Rewrite Working Group (RRWG) to develop and submit to the SCJC a “rules rewrite methodology” for the Rules Rewrite Project to frame the rules required to implement the recommendations of the Scottish Civil Courts Review and the Courts Reform (Scotland) Bill and to consider the prioritisation of separate phases of the rules revisions.

23. The RRWG has carried out a review of the approach that other jurisdictions have taken when undertaking similar projects to establish if any lessons can be learned. The Group submitted an Interim Report to the SCJC in March, in which it made the following key recommendations:

- the retention of separate rules for the Court of Session and the sheriff court rather than the adoption of a unitary code for both;
- with the exception of the simple procedure, which is to be designed with party

- litigants in mind, the rules of the sheriff court and Court of Session should be identical in procedure and wording, where appropriate;
- there should be a statement of principle and purpose in both the sheriff court and Court of Session rules, to which the court should have due regard, but that it should not override the other rules of court;
- that management of litigation should transfer to the courts, and that judges and the judicial system take a proactive stance in managing the progression of cases through the courts;
- public consultation on draft rules should not be adopted as standard, but considered on a case-by-case basis;
- draft rules should be placed on the SCJC website in their draft form and there should be a 3 month laying period for new rules wherever possible;
- a review of individual suites of new rules, to be carried out 18-24 months after their entry into force, should be built into the annual rules programme.

24. The RRWG has recommended that the following suites of rules changes should be taken forward as a priority and that drafting should begin on each of them during 2014:

- increase to the privative limit;
- judicial structures (introduction of the new judicial offices of summary sheriff and Appeal Sheriff);
- creation of a Sheriff Appeal Court;
- creation of a specialist personal injury court, with civil jury trials;
- simple procedure;
- judicial case management;
- rules for enforcement / sanctions;
- creation of compulsory pre-action protocols; and
- judicial review.

25. These immediate priority areas are included in the SCJC's 2014/15 business plan. A specialist drafting team is in the process of being recruited in order that drafting can begin in earnest over the coming months. That team will be tasked with further establishing the work required to draft the suites of rules identified as priorities and drafting the new rules themselves.

26. The RRWG is due to prepare a final report by summer 2014. That report will set out in more detail how the new rules should be drafted, including as to how the aims of harmonisation, modernisation and simplicity of the rules might best be achieved. The SCJC is giving consideration to extending the RRWG's remit to include matters relating to court procedure generally, such as the preparation of rules that will be required to support the introduction of the new Sheriff Appeal Court, new judicial officers (summary sheriffs) and other general matters which do not clearly fall within the remit

of any other SCJC committees.

27. 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.

### *Tribunals (Scotland) Act 2014*

28. The Scottish Government introduced the Tribunals (Scotland ) Bill to the Scottish Parliament in May 2013. It received Royal Assent on 15 April 2014. The Tribunals (Sc) Act 2014 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 Act are:
- (a) the creation of a two-tier structure for tribunals - a First-tier Tribunal for hearing first decision cases and Upper Tribunal Scotland, primarily to hear appeals from the First-tier
  - (b) to bring judicial leadership for tribunals under the remit of the Lord President;
  - (c) the creation of a new office, the President of the Scottish Tribunals, with responsibility for ensuring tribunal business runs effectively and efficiently; and
  - (d) the establishment of new independent appointment arrangements.
29. Of particular relevance to the SCJC are the provisions within the Act 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 Act 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.
30. 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. In the interim, the Scottish Tribunals and Administrative Justice Advisory Committee has been established by the Scottish Government to consider matters relating to the devolved and administrative and tribunals system in Scotland and what arrangements should be put in place in relation to the administrative justice system in the longer term.
31. The SCJC will 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) in due course. 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*

32. 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.
33. 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.
34. As well as the consideration of individual proposals, careful examination is required as to which recommendations might be taken forward through court rules (which would fall to the SCJC to prepare) and which might require primary legislation (which would need to be considered by the Scottish Government).
35. 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.
36. In the longer term, as identified in Sheriff Principal Taylor's report, the SCJC will have a role in monitoring implementation of any of his recommendations.
37. The SCJC has established a Costs and Funding Committee to consider, among other things, the full range of Sheriff Principal Taylor's proposals. The Committee is due to report by autumn 2014.
38. Sheriff Principal Taylor has recommended that the SCJC should form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses (currently carried out by the Lord President's Advisory Committee). The SCJC considers that its statutory functions would need to be extended to give full effect to this recommendation and, subject to government and parliamentary consideration of the matter, will prepare itself to take on this responsibility. In the meantime, the Costs and Funding Committee will work with the Lord President's Advisory Committee in

considering those aspects of Sheriff Principal Taylor’s report which fall within the remit of both.

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

39. 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.
40. 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.

#### Recently enacted Bills

Bankruptcy and Debt Advice (Sc) Act 2014  
 Children and Young People (Sc) Act 2014  
 Marriage and Civil Partnership (Sc) Act 2014  
 Regulatory Reform (Sc) Act 2014  
 Scottish Independence Referendum (Franchise) Act 2013  
 Tribunals (Sc) Act 2014  
 Victims and Witnesses (Sc) Act 2014

#### Bills before the Scottish Parliament

Courts Reform Bill  
 Housing Bill  
 Legal Writings (Counterparts and Delivery) Bill

#### Bills to be introduced to the Scottish Parliament in 2014

Bankruptcy Consolidation Bill  
 Damages Bill  
 Licensing Bill  
 Mental Health and Adults with Incapacity Amendment Bill

### UK legislation

*Consumer Rights Bill*

*Intellectual Property Act 2014*

*Third Parties (Rights Against Insurers) Act 2010*

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

41. 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 26-34).
42. 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. The majority of rules changes emanate from legislation initiated by the Scottish Government. The SCJC is therefore working with the Scottish Government to ensure that these changes can be properly co-ordinated so as to ensure progress on civil courts reform can be maintained.
43. 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*.

#### Consideration of improvements to procedures and system improvements

44. The SCJC will consider changes to practice and procedure in response to policy initiatives, by specific request, or of its own accord. For example, one matter currently before the SCJC is a Scottish Government proposal 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.
45. In addition to the work described above, SCJC committees are currently carrying out the following pieces of work with a view to reporting to the SCJC as to the policy to be adopted during the course of 2014/15:
  - review of the arrangements for actions conducted by party litigants, arrangements for lay representation and lay support, and the information and guidance available to each (Access to Justice Committee);
  - review of the arrangements for the use of alternative methods of dispute resolution in the Scottish civil courts (Access to Justice Committee);

- information gathering exercise on the use of pre-action protocols in personal injury proceedings (Personal Injury Committee); and
- comparative research to establish what might be done with available and potential technology in the Scottish civil courts and to better understand what barriers to the use of information technology exist (ICT Committee).

## Resources

SCJC Resource Allocation 2014/15		
Category	Description	£
Staffing (Secretariat and communications)	Deputy Secretary 3 Policy Officers 0.2 Communications Officer	176,000
Staffing (Legal)	2.2 (Full Time Equivalent) Solicitors	149,000
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 ongoing 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 and Hospitality	Occasional venue hire and hospitality costs may be required for conferences, events, facilitated workshops etc.	10,000
<b>Total staffing</b>		<b>325,000</b>
<b>Total other</b>		<b>84,000</b>
<b>TOTAL</b>		<b>409,000</b>

46. 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, specialist communications support provided by the Judicial Office Communications team, 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 £325,000 per annum.

47. A specialist drafting team, made up of government lawyers, will also be recruited during 2014/15 to carry out the rules revisions under the Rules Rewrite Project. As noted in the Financial Memorandum to the Courts Reform (Sc) Bill, it is expected that the team will consist of a lead drafter and four others. The estimated cost of that team is £412,000 per annum for 2104/15, plus potential office rental of £15,000 per annum.
48. The SCJC has been allocated an additional £84,000 (as detailed in the table above) during 2014/15 to assist it in carrying out its functions. The SCJC's budget allocation is subject to review by the SCS.

## Governance

49. 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.
50. 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

51. 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 annual programme for 2014/15 may be combined with the annual report for 2013/14, in accordance with section 5 of the 2013 Act.
52. 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.
53. 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.

54. 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*

55. 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; the Scottish Tribunals Service; members of the judiciary; and the Association of Chief Police Officers in Scotland (ACPOS).
56. The Secretary to the SCJC is represented on the MJW Programme Board 1 (Effective Courts and Tribunals) 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**

57. 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 2014/15

Subject	Action	Lead	Key dates
<b>JUSTICE SYSTEM REFORM</b>			
Courts Reform (Sc) Bill	Consideration of Bill during Parliamentary stages.	SCJC (with delegation to relevant committees where appropriate)	Bill introduced 6 February 2014.
Rules Rewrite Project	<p>Develop Rules Rewrite methodology:</p> <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> <p>This includes rules to implement Courts Reform (Sc) Bill and wider SCCR recommendations.</p>	Rules Rewrite Working Group (RRWG)	Interim Report prepared March 2014, final report due summer 2014.
Rules Rewrite Project	Consideration to be given to ICT systems required to support new rules, how to co-ordinate these with existing systems and how rules might be drafted so as to ensure best use of available and potential technology. To some extent this work will be interdependent with that	ICT Committee	During 2014

Subject	Action	Lead	Key dates
	of the RRWG.		
Rules Rewrite Project – Rules	<ul style="list-style-type: none"> <li>Rules to support the increase to the Privative Limit</li> <li>Rules for enforcement / sanctions to ensure adherence to rules</li> </ul>	Costs and Funding Committee/ RRWG as appropriate	Drafting to begin in 2014
	<ul style="list-style-type: none"> <li>Judicial Structures (introduction of the new judicial offices of summary sheriff and Appeal Sheriff)</li> <li>Creation of a Sheriff Appeal Court</li> <li>Judicial review</li> </ul>	RRWG	
	<ul style="list-style-type: none"> <li>Creation of a specialist personal injury court, with civil jury trials Compulsory pre-action protocols</li> </ul>	Personal Injury Committee	
	<ul style="list-style-type: none"> <li>Simple procedure</li> </ul>	Access to Justice Committee (AtJC)	

Subject	Action	Lead	Key dates
	<ul style="list-style-type: none"> <li>Judicial case management</li> </ul>	RRWG (rules for specific types of action will fall to relevant committees)	
Tribunals (Sc) Act 2014	Monitor implementation and in due course prepare to take on functions for preparation of tribunal rules.	SCJC (Secretariat to monitor)	Implementation of amendments to SCJC functions expected 2017.
Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland	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.	Costs and Funding Committee	By end 2014
<b>IMPLEMENTATION OF LEGISLATION</b>			
Consideration of new and recent legislation	<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>Acts of the Scottish Parliament</i></p>	SCJC and relevant committees	SCJC Secretariat will liaise with relevant policy teams as to timescales for implementation.

Subject	Action	Lead	Key dates
	<ul style="list-style-type: none"> <li>• Bankruptcy and Debt Advice (Sc) Act 2014</li> <li>• Children and Young People (Sc) Act 2014</li> <li>• Marriage and Civil Partnership (Sc) Act 2014</li> <li>• Regulatory Reform (Sc) Act 2014</li> <li>• Scottish Independence Referendum (Franchise) Act 2013</li> <li>• Victims and Witnesses (Sc) Act 2014</li> <li>• Tribunals (Sc) Act 2014</li> </ul> <p><i>Bills before the Scottish Parliament:</i></p> <ul style="list-style-type: none"> <li>• Courts Reform Bill</li> <li>• Housing Bill</li> <li>• Legal Writings (Counterparts and Delivery) Bill</li> </ul> <p><i>Bills to be introduced to the Scottish Parliament in 2014:</i></p> <ul style="list-style-type: none"> <li>• Bankruptcy Consolidation Bill</li> <li>• Damages Bill</li> <li>• Licensing Bill</li> <li>• Mental Health and Adults with Incapacity Amendment Bill</li> </ul> <p>It is anticipated that the Bankruptcy Consolidation Bill, Housing Bill and the Mental Health and Adults with Incapacity Amendment Bill may have particular implications for the work of the SCJC.</p> <p><i>UK legislation</i></p> <ul style="list-style-type: none"> <li>• Consumer Rights Bill</li> <li>• Intellectual Property Act 2014</li> <li>• Third Parties (Rights Against Insurers) Act 2010</li> </ul>		

Subject	Action	Lead	Key dates
Mutual Recognition of Protection measures in civil matters	Consideration and preparation of changes to rules required for the implementation of Regulation (EU) No. 606/2013 on the Mutual Recognition of Protection Measures in Civil Matters.	SCJC	Implementation to be effected by 11 January 2015.
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	SCJC giving consideration to policy following UKSC decision in <i>Application of BBC Scotland re A v Secretary of State for the Home Department</i> .
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 date.
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.	SCJC	Implementation timetable tbc.
<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.

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>	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.
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>• Scottish Government Bar Reporters Working Group</li> <li>• Implementation of the EU Directive on Alternative Dispute Resolution for consumer Disputes and Regulation on Online Dispute Resolution consumer Disputes</li> <li>• Development of a Justice Digital Strategy</li> </ul> <p>In addition, the SCJC will monitor the work of various groups considering matters which also fall within the remit of the SCJC remit, such as the Inner House Users Group, the Personal Injury Users Group,</p>	SCJC and relevant Committees	SCJC Secretariat will liaise with relevant policy teams and groups as to relevant timescales and revert to the SCJC as appropriate.

Subject	Action	Lead	Key dates
	the Consultative Committee on Commercial Actions and the Lord President's Advisory Committee.		
<b>COMMUNICATIONS AND ENGAGEMENT</b>			
Communications Strategy	Development and maintenance of communications and engagement strategy.	SCJC Secretariat	Ongoing.
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, a joint event for SCJC and SCS Board members and engagement with the Civil Justice Council and Civil Procedure Rule Committee in England and Wales.	SCJC Secretariat	Ongoing
SCJC website	Further development of the SCJC website, including improvements in branding, site navigation, and web analytics.	SCJC Secretariat	Throughout 2014.
<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, how to handle information and records management to be developed for SCJC and committee members.	SCJC Secretariat	Spring 2014
Drafting and	Seminar on drafting and the legislative process to be carried out.	SCJC	Spring/summer 2014.

Subject	Action	Lead	Key dates
legislation		Secretariat	
<b>CORPORATE ACTIVITY</b>			
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' Bills and Scottish Law Commission activity will be kept under review. This includes: the SLC Judicial Factors (Sc) Bill, the Apologies (Sc) Bill and the Inquiries into Deaths (Sc) Bill (the latter two both being Members' Bills).	SCJC Secretariat will consider in the first instance.  Detailed consideration and rules which may be required in consequence will be for the SCJC or relevant committees.	Ongoing. The SCJC Secretariat will liaise with UK and Scottish 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 Lord President's Private Office	Ongoing.

Subject	Action	Lead	Key dates
Annual business programme	The SCJC is under a statutory obligation to prepare an annual business programme for 2015/16 by 31 March 2015 and to lay the programme before parliament. The annual programme may be combined with the annual report for the preceding year for the purposes of laying before parliament.	SCJC Secretariat	To be submitted to SCJC by March 2015.
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	To be considered at SCJC meeting of 12 May 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.
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.

## Further information and contacts

58. Full information about the SCJC and its activities is 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.

59. Contact details for the SCJC are as follows:

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