

ITEM 3: FORWARD WORK PROGRAMME

Purpose

1. To provide the Council with an outline of the impact of the programme of legislative reform on the creation of a forward work programme and to seek agreement to the proposed programme which will be further “worked up” by the SCJC Secretariat prior to the next Council meeting.

Discussion

2. There are currently 3 major legislative reforms that will have a direct impact on the work of the Council over the course of the forthcoming year. These are; the Court Reforms (Sc) Bill; Sheriff Principal Taylor’s Review on Expenses and Funding in Civil Litigation in Scotland; and the Tribunals (Sc) Bill. Given the level of legislative reform both through 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.
3. In considering and developing this programme consideration will also require to be given to practical consideration such as the budget for the Council, the timetable for future meetings and the communications strategy.

Primary Legislation

Court Reforms (Sc) Bill

4. As indicated in the update provided by the Scottish Government, the consultation Court Reforms (Sc) Bill has recently closed and the responses are currently being analysed. It is anticipated that the Bill will be introduced into Parliament early next year. The Court Reforms (Sc) Bill is essentially an enabling Bill which leaves much of the detail of the reforms to be developed through court rules. In order to facilitate the wider implementation of civil courts reform, a “Rules Rewrite” project has been initiated under the remit of the Making Justice Work Project Board 1. The SCJC members are asked to consider the terms of the Project Initiation Document (PID)[Paper 3.3A].

5. The "Rules Rewrite" project has been commenced for the following reasons:

- 5.1 **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 Lord Gill's "Civil Courts Review".

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 relative cost of each case.

That will entail methodically working through each of 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 21st century.

- 5.2 **Consolidation.** The current rules of court have arisen on a piecemeal basis over several decades, and in some cases centuries. They reflect the multiple outcomes of having separate rule making bodies with differing priorities operating over differing timelines. As a consequence there is a level of duplication and specialisation of rules which adds an unnecessary layer of complexity and cost to court procedure.

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 includes having: "Court procedures that are as easy as possible to understand and access".

6. Given that the Making Justice Work Project Board 1 has initiated the Rules Rewrite Project, Council members are asked for views as to how this project can be facilitated through the SCJC. It is recommended that a working group be established to consider the first phase of this project, the "methodology" of the rule rewrite programme.
7. Phase 1 of the Rules Rewrite project is set out at page 12 of the PID. In essence Phase 1 is the planning phase of the overall rewrite of the project. This sets the scope and

programme of reform and it is essential that this phase is completed successfully to establish the foundations for the overall project. It is recommended that a working group of the Council be established to consider Phase 1 of this project. The remit of such a group would be to:

- consider the vision and objective of the new rules;
- 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);
- develop and submit to the SCJC a “rules rewrite methodology”;
- 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);
- agree the format and guidance for “drafting instructions” whether this be through the committee structure or the SCJC Secretariat; and
- develop an annual rules rewrite programme which enables specific phases of rules to be prioritised.

8. It is recommended that a working group be established to undertake Phase 1 of the Rules Rewrite Project, that the Council task the group with the remit as set out in paragraph 7 and that expressions of interest are sought for membership of the working group. The group will be established by the SCJC Secretariat in coordination with the Chair.

9. We have given thought to whether these work streams should be progressed in respect of this legislation before it is introduced into Parliament, however, given the scale and scope of this reform programme it is considered essential that matters capable of being addressed in early course by the SCJC are done so.

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

10. Sheriff Principal Taylor's review is due to report in September 2013. It is proposed in Item 4.3 that the Council may wish to establish a Finance Committee to consider the implications of this report, amongst other matters. It is anticipated that the findings of Sheriff Principal Taylor's review will be of direct importance to the implementation of the Court Reforms (Sc) Bill and the wider legislative programme of reform.

Tribunals (Sc) Bill 2013

11. The Tribunals (Sc) Bill 2013 was introduced into the Scottish Parliament in May of this year. As members may be aware, paragraph 12 of Schedule 10 to the Bill includes provision for a mandatory committee of the SCJC to be established for tribunals and for the membership of the SCJC to include the Tribunals President and a tribunals representative. We understand that the Scottish Government do not intend to commence the provisions relevant to the SCJC for a number of years to enable the SCJC to consider the implementation of the Court Reforms (Sc) Bill without the additional function in respect of tribunals and more particularly tribunal rules. Having said this, with the forthcoming merger of the Scottish Court and Scottish Tribunal Service and the responsibility for Tribunal Judiciary falling to the Lord President, it is essential that the SCJC consider their role in this context.

Secondary Legislation

12. Further detail will be provided in Item 5 as to the secondary legislation programme in the "tracker" (5.1). In addition to the major primary legislation implementation projects, the Council will also require to consider the ongoing need for court rules as a consequence of legislative reform.
13. The previous rules councils have been somewhat reactive to legislative reform. To an extent this will continue with the Scottish and UK Government presenting policy papers for the Council's consideration via the secretariat in advance of meetings. To assist in the timing of such policy request, Bill guidance will be prepared in due

course alongside a style form in which policy papers should be presented for the Council's consideration. This will be prepared by the SCJC secretariat for the Council's consideration prior to the September meeting.

14. There has been some concern raised about the "reactive" nature of the previous rules councils to legislative reform. 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.

Practical considerations for the forward work plan

- **Scottish Civil Justice Council operating costs 2013/14**

15. The operational costs of the SCJC are met by the Scottish Court Service. The budget allocated to the SCJC for financial year 2013/14 is outlined in the table below.
16. The predicted budget requirement is based on the initial projections as outlined in the [Financial Memorandum](#) to the Scottish Civil Justice and Criminal Legal Assistance Bill (when introduced to the Scottish Parliament in May 2012). There has been some departure from those initial projections following more recent consideration given to the likely costs.

SCJC Budget 2013/14		
Category	Description	Estimated cost
Staffing (Secretariat)	Deputy Secretary 2 Policy Officers Administration	179,000
Staffing (Drafting)	2.2 (Full Time Equivalent) Solicitors	153,000
Consultation	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.	10,000
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 (Council)	Reimbursement of SCJC members' Travel & Subsistence, additional expenditure and financial loss.	14,000
Expenses (Committees)	Reimbursement of Committee members' Travel & Subsistence, additional expenditure and financial loss.	5,000
Publishing	Registration costs for lodging each statutory instrument (SSI), and publication of the annual report and programme.	10,000
Recruitment	On-going recruitment of new council members and/or secretariat staff.	5,000
Research	Occasional research that may be commissioned directly from subject matter experts to support some elements of the work programme.	10,000
Training	Training for secretariat staff and members.	5,000
Venue Hire	Occasional venue hire may be required for conference events, facilitated workshops etc.	10,000
Total staffing		332,000
Total other		84,000
TOTAL		416,000

- **Future Meetings of the Council**

17. Future meetings of the Council have been scheduled as follows:

- Monday 23 September 2013
- Monday 18 November 2013
- Monday 13 January 2014

- Monday 10 March 2014
- Monday 12 May 2014
- Monday 30 June 2014

- **Communications Strategy**

18. Subject to members' agreement of the creation of a forward work programme to incorporate the matters addressed above, a communications strategy will be developed for consideration at the September meeting.
19. It is suggested that a formal launch event for the Council be held around the time of the September meeting. Subject to members' agreement, the Secretariat will take forward arrangements in that regard during the summer.

Recommendations

- **That the Council agree to the creation of a forward work programme based on the key points outlined above for detailed consideration at the September meeting. (Please note that the consideration of the committee structure will be vital to the creation of the forward work programme.)**

Legislative Reform

- **That the Council note the forthcoming legislative reform programme and agree to the creation of the a working group to consider Phase 1 of the Rules Rewrite project ("methodology")**
- **Should the Council agree to this working group that expressions of interest provided to the SCJC Secretariat for membership of this group by 24 June 2013**
- **Should the Council agree to this working group that the remit of the group is established on the basis of paragraph 7.**

- That the Council note the potential implications on the forward work plan of Sheriff Principal Taylor's report and the Tribunals (Sc) Bill

Secondary Legislation

- That the Council note the forward programme of secondary legislation (court rules) as set out in the tracker and confirm that they are content with the proposed manner in which this legislation is considered.

Practical consideration for the forward work programme

- That the Council note the practical implications which may impact on the forward work programme.