



Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

2013 asp 3

PART 1

SCOTTISH CIVIL JUSTICE COUNCIL

Establishment

1 Establishment of the Scottish Civil Justice Council

There is to be a body to be known as the Scottish Civil Justice Council (“the Council”).

Functions and powers

2 Functions of the Council

- (1) The functions of the Council are—
 - (a) to keep the civil justice system under review,
 - (b) to review the practice and procedure followed in proceedings in the Court of Session and in civil proceedings in the sheriff court,
 - (c) to prepare and submit to the Court of Session draft civil procedure rules,
 - (d) to provide advice and make recommendations to the Lord President on the development of, and changes to, the civil justice system, and
 - (e) to provide such advice on any matter relating to the civil justice system as may be requested by the Lord President.
- (2) In carrying out its functions under this Act, the Council must have regard to—
 - (a) the principles in subsection (3), and
 - (b) any guidance issued by the Lord President.
- (3) The principles are—
 - (a) the civil justice system should be fair, accessible and efficient,

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- (b) rules relating to practice and procedure should be as clear and easy to understand as possible,
 - (c) practice and procedure should, where appropriate, be similar in all civil courts, and
 - (d) methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.
- (4) For the purposes of this Part, “draft civil procedure rules” are draft rules which relate to a matter in subsection (5).
- (5) Those matters are—
- (a) any matter relating to a court within the remit of the Council which the Court of Session may regulate by act of sederunt,
 - (b) any matter relating to a court within the remit of the Council in anticipation of the Court of Session being given power to regulate the matter by act of sederunt, or
 - (c) any matter relating to a proposed court in anticipation of—
 - (i) the court being established and added to the remit of the Council, and
 - (ii) the Court of Session being given power to regulate the matter by act of sederunt.
- (6) The courts within the remit of the Council are—
- (a) the Court of Session, and
 - (b) the sheriff court.

3 Powers of the Council

- (1) The Council may take such action as it considers necessary or desirable in pursuance of its functions.
- (2) In particular, the Council may—
- (a) have regard to proposals for legislative reform which may affect the civil justice system,
 - (b) have regard to the criminal justice system and its effects on the civil justice system,
 - (c) consult such persons as it considers appropriate,
 - (d) co-operate with, and seek the assistance and advice of, such persons as it considers appropriate,
 - (e) make proposals for research into the civil justice system,
 - (f) provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system, and
 - (g) publish any recommendation it makes.

4 Court of Session to consider rules

- (1) The Court of Session must consider any draft civil procedure rules submitted to it by the Council and may—
- (a) approve the rules,
 - (b) approve the rules with such modifications as it considers appropriate, or
 - (c) reject the rules.

- (2) Where the Court of Session approves draft civil procedure rules (with or without modification) it must embody the approved rules in an act of sederunt.
- (3) Nothing in this Part affects the powers of the Court of Session to prepare or make rules which relate to a matter in section 2(5).

5 Annual programme and report

- (1) The Council must prepare an annual plan setting out its objectives and priorities for each yearly period beginning on 1 April before the start of that period (“the programme”).
- (2) The Council must prepare an annual report on its activities as soon as reasonably practicable after the end of each yearly period ending on 31 March (“the report”).
- (3) The report must include a summary of the recommendations made (if any) by the Council during the period covered by the report.
- (4) The Council must lay a copy of the programme and the report before the Scottish Parliament.
- (5) In complying with the duty in subsection (4), the Council may combine the programme for the coming year with the report for the ending year.

Membership

6 Composition of the Council

- (1) The Council is to have not more than 20 members and is to be comprised of—
 - (a) the Lord President,
 - (b) the Chief Executive of the Scottish Court Service,
 - (c) the principal officer of the Scottish Legal Aid Board,
 - (d) 1 member appointed by the Scottish Ministers under subsection (2),
 - (e) at least 4 judges (“judicial members”), including a minimum of—
 - (i) 1 judge of the Court of Session, and
 - (ii) 1 sheriff principal or sheriff,
 - (f) at least 2 practising advocates (“advocate members”),
 - (g) at least 2 practising solicitors (“solicitor members”),
 - (h) at least 2 persons (“consumer representative members”) who, between them, appear to the Lord President to have—
 - (i) experience and knowledge of consumer affairs,
 - (ii) knowledge of the non-commercial legal advice sector, and
 - (iii) an awareness of the interests of litigants in the civil courts, and
 - (i) up to 6 other persons considered by the Lord President to be suitable to be members of the Council (“LP members”).
- (2) The Scottish Ministers must appoint as a member a person who is a member of staff of the Scottish Government and whom they consider to be suitable to be a member of the Council.

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- (3) The Scottish Ministers may by order amend subsection (1) by substituting for the number of members (or the minimum number in a category of membership) for the time being specified there such other number as they think fit.
- (4) Before making an order under subsection (3) the Scottish Ministers must consult the Lord President.
- (5) The power to make an order under subsection (3) includes power to make such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (6) But such power does not include power to modify the description of a category of membership described in subsection (1) or to add a category of membership.
- (7) Orders under subsection (3) are subject to the affirmative procedure.

7 Lord President appointment process

- (1) The Lord President must appoint persons to be members of the Council in respect of the categories of membership described in section 6(1)(e) to (i) and ensure that the number of members in each such category of membership is maintained at the required level.
- (2) The Lord President must prepare and publish a statement of appointment practice setting out the process which the Lord President will follow for appointing—
 - (a) advocate members,
 - (b) solicitor members,
 - (c) consumer representative members, and
 - (d) LP members.
- (3) In preparing the statement of appointment practice the Lord President must have regard to the principles in subsection (4).
- (4) The principles are—
 - (a) appointments to the Council should be made fairly and openly, and
 - (b) so far as reasonably practicable, all eligible persons should be afforded an opportunity to be considered for appointment.
- (5) The statement of appointment practice must include a requirement for the Lord President to consult—
 - (a) the Faculty of Advocates before appointing an advocate member,
 - (b) the Council of the Law Society of Scotland before appointing a solicitor member,
 - (c) the Scottish Ministers before appointing—
 - (i) a consumer representative member, or
 - (ii) a LP member.

8 Tenure

- (1) The Lord President, the Chief Executive of the Scottish Court Service and the principal officer of the Scottish Legal Aid Board are members of the Council by virtue of holding their respective offices.

- (2) A member appointed by the Scottish Ministers holds office until such time as the Scottish Ministers appoint a replacement member.
- (3) A judicial member holds office for a period of 3 years unless, prior to the expiry of that period, the Lord President replaces the member with another judicial member or requires the member to leave office.
- (4) Any other member holds office for a period of 3 years.
- (5) A member appointed under section 7(1) ceases to hold office—
 - (a) at the end of a period of appointment,
 - (b) upon giving written notice of resignation to the Lord President,
 - (c) on becoming disqualified from holding office as a member or on being removed from such office (see section 9),
 - (d) on ceasing to fall within the category of membership in respect of which the member was appointed.
- (6) For the purposes of subsection (5)(d), a LP member ceases to fall within that category of membership where, in the opinion of the Lord President, the basis of the LP member's appointment has materially changed.
- (7) A person who is or has been a member of the Council may be reappointed (whether in respect of the same or a different category of membership) for further periods.

9 Disqualification and removal from office

- (1) A person is disqualified from appointment under section 7(1) as a member of the Council, and from holding office as such a member, if the person is or becomes—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the European Parliament,
 - (d) a councillor of any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994,
 - (e) a member of the Scottish Government, or
 - (f) a Minister of the Crown.
- (2) The Lord President may, by notice in writing, remove any member appointed under section 7(1) if satisfied that the member—
 - (a) is unfit to be a member by reason of inability, neglect of duty or misbehaviour, or
 - (b) is otherwise unsuitable to continue as a member.
- (3) The Lord President must consult the Scottish Ministers before removing—
 - (a) a consumer representative member, or
 - (b) a LP member.

10 Expenses and remuneration

- (1) The Scottish Court Service may pay such expenses as it thinks fit to—
 - (a) a member of the Council, and

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- (b) a person appointed under section 13(2) as a member of a committee of the Council.
- (2) The Scottish Court Service may pay such remuneration as it thinks fit to—
- (a) an advocate member,
 - (b) a solicitor member,
 - (c) a consumer representative member,
 - (d) a LP member, and
 - (e) a person (other than one mentioned in subsection (3)) appointed under section 13(2) as a member of a committee of the Council.
- (3) Remuneration is not to be paid under subsection (2) to a person who is—
- (a) a member of staff of the Scottish Legal Aid Board, or
 - (b) a member of staff of the Scottish Administration.

Operation

11 Chairing of the Council

- (1) It is for the Lord President to determine who is to be chair of the Council.
- (2) The only persons who may be chair are—
- (a) the Lord President (but see also section 12(5)), or
 - (b) a judicial member holding the office of judge of the Court of Session.
- (3) A person ceases to be chair when—
- (a) if applicable, the judicial member ceases to be a member of the Council, or
 - (b) the Lord President determines that someone else is to be chair under subsection (1).
- (4) Members of the Council must elect a member to act as deputy to the chair.

12 Proceedings

- (1) The Lord President may determine the number of members required to constitute a quorum for meetings of the Council.
- (2) The Lord President may determine different numbers of members to constitute a quorum for different purposes.
- (3) The Council may otherwise determine—
- (a) its own procedure, and
 - (b) the procedure of any committees established by it.
- (4) The validity of any proceedings or actings of the Council is not affected by—
- (a) any vacancy in the membership of the Council (even if that vacancy creates a deficiency in one of the categories of membership),
 - (b) any defect in the appointment of a member of the Council,
 - (c) disqualification of any individual from holding office as a member of the Council.

- (5) The Lord President may nominate the Lord Justice Clerk to attend and participate in meetings of the Council on behalf of the Lord President (which participation includes, where the Lord President is acting as chair under section 11(1), chairing the meeting).
- (6) The Chief Executive of the Scottish Court Service may nominate a member of staff of the Scottish Court Service to attend and participate in meetings of the Council on behalf of the Chief Executive.
- (7) The principal officer of the Scottish Legal Aid Board may nominate a member of staff of the Scottish Legal Aid Board to attend and participate in meetings of the Council on behalf of the principal officer.
- (8) The Scottish Ministers may nominate another member of staff of the Scottish Government who they consider would be suitable to be a member of the Council to attend and participate on behalf of the member appointed by them under section 6(2).

13 Committees

- (1) The Council may establish committees.
- (2) A person who is not a member of the Council may be appointed to be a member of any committee established by it.

General

14 Dissolution of existing rules councils

- (1) The Court of Session Rules Council established under section 18 of the Administration of Justice (Scotland) Act 1933 (c. 41) (and continued under section 8 of the Court of Session Act 1988 (c. 36)) is dissolved.
- (2) Section 8 of the Court of Session Act 1988 is repealed.
- (3) The Sheriff Court Rules Council is dissolved.
- (4) Sections 33 and 34 of the Sheriff Courts (Scotland) Act 1971 (c. 58) are repealed.

15 Modification of enactments

- (1) In section 38(3) of the Legal Aid (Scotland) Act 1986 (c. 47) (rules of court), after “consult” insert “the Scottish Civil Justice Council,”.
- (2) In section 32(3) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (power of Court of Session to regulate civil procedure in sheriff court), for “Sheriff Court Rules Council under section 34 of this Act” substitute “Scottish Civil Justice Council”.
- (3) In section 62 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (administrative support for other persons), in subsection (1)—
 - (a) after paragraph (d) insert—

“(ea) the Scottish Civil Justice Council,” and
 - (b) paragraphs (e) and (g) are repealed.

16 Interpretation of Part 1

In this Part—

“advocate” means a member of the Faculty of Advocates,

“draft civil procedure rules” has the meaning given in section 2(4),

“solicitor” means a person qualified to practise as solicitor under section 4 of the Solicitors (Scotland) Act 1980 (c. 46),

“the Chief Executive of the Scottish Court Service” means the chief executive appointed under paragraph 14(1) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 (asp 6),

“the Lord Justice Clerk” means the Lord Justice Clerk of the Court of Session,

“the Lord President” means the Lord President of the Court of Session,

“the principal officer of the Scottish Legal Aid Board” means the principal officer appointed under paragraph 7(1) of Schedule 1 to the Legal Aid (Scotland) Act 1986 (c. 47).