



Scottish
Civil Justice
Council

Annual Programme 2015/16

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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.

Functions and powers

2. 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.
3. 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

4. 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 Courts and Tribunals Service

Eric McQueen was appointed as Chief Executive of the Scottish Courts Service (SCS) (which became the Scottish Courts and Tribunals Service (SCTS) on 1 April 2015) on 1 January 2013. The SCTS supports justice by providing the people, buildings and services needed for the work of Scotland's courts and tribunals, members of the judiciary, and the Office of the Public Guardian. The SCTS 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 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 was appointed to his present office as Sheriff Principal of South Strathclyde, Dumfries and Galloway in January 2015.



Sheriff Hughes

Sheriff Hughes graduated from the University of Strathclyde. He was a partner of the firm of McAuley McCarthy and Co from 1980 until 2003 and practiced principally in the field of civil litigation. Sheriff Hughes tutored on the Diploma for Legal Studies at the Glasgow Graduate School of Law from 1990 to 2004 and from 2000 was the Head Tutor in Civil Court Practice and Advocacy. In 2003 Sheriff Hughes was appointed as a part time sheriff and in 2004 he was appointed as a resident sheriff at Dundee Sheriff Court. A contributor to the latest edition of Macphail – Sheriff Court Practice, Sheriff Hughes also has a great interest in Education and from 2000-2003 served as a Director on the Scottish School Boards Association for East Renfrewshire.

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. In February 2015, Andrew was appointed the first President of the Scottish Tax Tribunals.



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.



Paul Reid

Paul Reid is a Solicitor Advocate with extended rights of audience in the High Court of Justiciary, the Court of Session and the Supreme Court.



Jacqueline Harris

Jacqueline is a partner in the Litigation and Compliance team of the commercial law firm Pinsent Masons which is one of the largest legal practices in Scotland. Jacqueline has over 25 years' experience of litigation practice acting predominantly for commercial clients. She has represented clients in litigation before the Sheriff Court, Court of Session and Supreme Court.

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.

Lord President 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 from 1993 and as a Solicitor from 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. 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

5. The SCJC meets 6 times a year. Future meeting dates are:
 - 2.00pm, Monday 11 May 2015
 - 10.00am, Monday 06 July 2015
 - 10.00am, Monday 28 September 2015
 - 10.00am, Monday 23 November 2015

Committees and Working Groups

6. The SCJC may set up committees and ad hoc working groups to assist it in carrying out its functions. The committees which have been established are:
 - Family Law Committee
 - Personal Injury Committee
 - Rules Rewrite Committee
 - Access to Justice Committee
 - Information and Communications Technology Committee
 - Costs and Funding Committee
7. The remit and membership of each Committee is provided below. In addition to the members, operational staff and clerks of 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](#)¹ 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.

Current Members

The Hon. Lord Brailsford	Chair
Sheriff Fiona Tait	Sheriff, Perth Sheriff Court
Sheriff McCulloch	Sheriff, Kirkcaldy Sheriff Court
Ian Maxwell	Families Need Fathers, SCJC member
Lynda Brabender	Advocate
Clair McLachlan	Solicitor, Russells 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

¹ *NJDB (Appellant) v JEG and another (Respondents) (Scotland)* [2012] UKSC 21

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.

Current Members

The Hon. Lord Jones	Chair
Sheriff Mackie	Sheriff, Edinburgh Sheriff Court
Sheriff Principal	Sheriff Principal of South Strathclyde,
Abercrombie QC	Dumfries and Galloway, 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	Sheriff Principal of Lothian and Borders
Stephen	(papers member)

Access to Justice Committee

Remit

The Committee's remit is 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 expeditiously 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.

Current 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.
Paul Reid	Solicitor, SCJC member
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

ICT Committee

Remit

The Committee's remit is 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.

Current Members

The Hon. Lord Tyre	Chair, SCJC member
Sheriff Sean Murphy	Sheriff, Glasgow Sheriff Court
Gavin MacColl	Advocate
Anthony Jones	Solicitor, bto solicitors
Lauren Wood	Citizens Advice Scotland, SCJC member
Craig McCorkindale	Scottish Courts and Tribunals Service
Marie-Louise Fox	Scottish Legal Aid Board
Stuart Duncan	Scottish Government
Richard Maconachie	Chief Financial Officer, SCTS (papers member)

Costs and Funding Committee

Remit

The Committee's remit is concerned with those matters that can be regulated by the Court of Session by rules under-

- the power to make provision about the expenses that may be awarded in civil proceedings in the Court of Session, the sheriff court and the Sheriff Appeal Court;
- the power to make provision about fees in relation to such proceedings;
- the power to make provision about how orders sought in certain proceedings should be valued (for the purpose of the exclusive competence of the sheriff court, and for the purpose of the application of simple procedure); and
- the power to make provision about the rate of interest payable under a decree.

In relation to these matters the Committee has a remit-

- to keep the relevant rules, tables and fees under review;
- to consider proposals for modification and reform; and
- to report to the Scottish Civil Justice Council with its recommendations and, where applicable, draft rules.

In the exercise of the foregoing remit the Committee is to take due account of-

- the need to ensure that actions proceed through the civil courts as expeditiously as possible, and at a cost proportionate to the sum or matter in dispute; and
- the desirability of achieving a consistency of approach in the Court of Session, the sheriff court, and the Sheriff Appeal Court, while recognising the different circumstances of those courts;

and, where appropriate, will provide draft rules for the Council's consideration.

Current 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
Iain Nicol	Solicitor, Compensation Lawyers (Scotland) Ltd
Lindsay Montgomery CBE	Chief Executive, Scottish Legal Aid Board, SCJC member
Stephen O'Connor	Scottish Government
Alan Rogerson	Claims Manager, AVIVA
Kenneth Cumming	Auditor of the Court of Session

Rules Rewrite Committee

The Rules Rewrite Committee was established on 30 June 2014 and replaced the Rules Rewrite Working Group.

Remit

1) The Committee's remit is to develop a statement of principle and purpose in the rules of the sheriff court and the Court of Session and prepare rules to address the following matters:

- a. the creation of a Sheriff Appeal Court and Appeal Sheriffs,
- b. the introduction of summary sheriffs,
- c. reform of judicial review proceedings, and
- d. case management.

The Committee may also consider any proposals for rules which do not otherwise fall within the remit of any other SCJC committee.

2) The Committee is to develop a framework for reviewing the new suites of rules prepared under the Rules Rewrite Project.

3) The Committee will, in due course, review ordinary proceedings in the Court of Session and the sheriff court and consider rules for the abolition of the distinction between ordinary and petition procedure in the Court of Session.

4) Each year, the Committee is to develop a rules rewrite programme to enable specific phases of rules to be prioritised and review the arrangements for instructing and drafting rules.

5) 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.

6) The Committee will have particular regard to the proposals in the Courts Reform (Sc) Bill, the recommendations of the Scottish Civil Courts Review and the recommendations of the Review of the Expenses and Funding of Civil Litigation in Scotland.

Current 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
Sheriff Thornton	Sheriff, Kirkcaldy Sheriff Court
Andrew Stewart QC	Advocate, SCJC member
Kenneth Forrest	Advocate, SCJC member
Jacqueline Harris	Solicitor, SCJC member
Prof. Frances Wasoff	University of Edinburgh, SCJC member
Jonathan Brown	Office of the Scottish Parliamentary Counsel (OSPC), Scottish Government
Kay McCorquodale	Scottish Government
Ian Dickson	Scottish Legal Aid Board

Secretariat

8. Secretariat for the SCJC is provided by the Scottish Court Service.

Secretary	Roddy Flinn
Deputy Secretary	Mandy Williams
Policy Officers	Susan Brodie
	Anne Hampson

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

10. A specialist drafting team, made up of Government lawyers, has been recruited to carry out the rules revisions under the Rules Rewrite Project.

Priorities

11. The SCJC will give particular focus to the following matters during 2015/16:

- continued 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 three major initiatives which continue to 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 Courts Reform (Scotland) Act 2014;

- the recommendations of Sheriff Principal Taylor’s Review on Expenses and Funding in Civil Litigation in Scotland; and
 - the Tribunals (Scotland) Act 2014.
13. During 2015/16, 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 three to five 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.

Civil Courts Reform and the Courts Reform (Scotland) Act 2014

15. The Courts Reform (Scotland) Act 2014 received Royal Assent on 11 November 2014.
16. The Act introduces major structural reform to change the way civil cases and summary criminal cases are dealt with by the Scottish courts. The key changes contained in the Act 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 £100,000;
 - (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.

17. The Courts Reform (Scotland) Act is essentially an enabling Act, which leaves much of the detail of the reforms to be developed through court rules. The SCCR proposed a large number of procedural changes (many of which are either provided for or enabled by the Bill) and, in addition, 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.
18. The SCJC established a Rules Rewrite Working Group (RRWG) with a remit 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.
19. The Group submitted an Interim Report to the SCJC in March 2014 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 three 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.
20. The RRWG produced a final report to the SCJC in January 2015. That report sets out in more detail how the new rules under the rewrite project should be drafted including how the aims of harmonisation, modernisation and simplicity might best be achieved. Following that report, the SCJC formally established the Rules Rewrite Committee with an extended 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 summary sheriffs and other general matters which do not clearly fall within the remit of any other SCJC

Committees.

21. On the recommendation of the RRWG the following suites of rules changes were taken forward as a priority:

- 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; and
- creation of compulsory pre-action protocols.

22. During 2014/15, the following progress was made on these priorities:

- Increase to the privative limit – draft rules to determine the value of an order sought in proceedings were prepared by the Costs and Funding Committee and submitted to the SCJC.
- Judicial structures – after consideration by the drafting team, it was decided that no specific rules were required.
- Creation of a Sheriff Appeal Court (SAC) – the Rules Rewrite Committee is considering rules to allow the SAC’s civil jurisdiction to begin in January 2016. Rules regarding the SAC’s criminal jurisdiction are being considered by the Criminal Justice Rules Council with whom SCJC is liaising.
- The creation of a specialist personal injury court, with civil jury trials – draft rules were prepared by the Personal Injury Committee, including “e-motions” and a Chapter 42A type procedure, and submitted to the SCJC.
- Simple procedure – this is being progressed by the Access to Justice Committee. Policy instructions are at an advanced stage and draft rules are targeted for the September 2015 SCJC meeting. Thereafter it is likely that there will be a formal consultation before implementation in spring 2016.
- Judicial case management – after consideration by the drafting team, it was decided that no specific rules were required. There has also been recent innovation in family procedure in the form of chapter 33AA of the sheriff court rules where pre-hearing conferences and case management hearings have been

introduced. The Family Law Committee is considering these developments in more detail.

- Rules for enforcement/sanctions – this is being considered by the Costs and Funding Committee as part of implementation of Sheriff Principal Taylor’s Review on the costs and funding of civil litigation in the Court of Session and sheriff court.
- The creation of compulsory pre-action protocols – this area has been considered in the context of PI actions. A broader approach may be taken in the longer term. The Personal Injury Committee is looking to introduce compulsory pre-action protocols around September 2016 after further detailed consideration and consultation.
- Judicial Review – draft rules were prepared by the Rules Rewrite Committee and submitted to the SCJC.

23. Work will continue on the above drafting priorities in line with the relevant commencement dates. On the recommendation of the Rules Rewrite Committee, the Council has agreed the following court reform drafting priorities for 2015/16:

- implementation of the remaining areas of the Courts Reform (Scotland) Act including lay representation for non-natural persons, vexatious proceedings and interdicts and other orders;
- development of a framework for reviewing the suites of rules prepared under the Rules Rewrite Project;
- commencement of structural review for rules rewrite proper;
- simple procedure personal injury rules; and
- wider consideration of compulsory pre-action protocols.

Tribunals (Scotland) Act 2014

24. The Tribunals (Scotland) Act 2014 received Royal Assent on 15 April 2014. The Act 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.
25. 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.
26. 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) Act 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 tribunals system in Scotland and what arrangements should be put in place in relation to the administrative justice system in the longer term.
27. The SCJC will need to consider how it will prepare for these additional functions and whether there is any requirement 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) Act 2014 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

28. 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.
29. 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.

30. The SCJC established a Costs and Funding Committee to consider, among other things, the full range of Sheriff Principal Taylor’s proposals. As well as considering the individual proposals, the Committee examined 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). The Committee reported to the SCJC in March 2015 setting out its proposed approach to implementation of the Taylor Report.
31. Sheriff Principal Taylor 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). From 1 April 2015 the SCJC’s statutory functions have been extended to give full effect to this recommendation. The remit of the Costs and Funding Committee will be reviewed in light of this extension of functions.

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 needs to be given to primary and EU legislation with regard to the potential requirement for new or amended rules.
33. The SCJC considers Scottish, UK and EU legislation and works with the three 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

Children and Young People Act 2014
 Revenue Scotland and Tax Powers Act 2014
 Housing (Scotland) Act 2014
 Courts Reform (Scotland) Act 2014

Bills before the Scottish Parliament

Human Trafficking and Exploitation (Scotland) Bill

Air Weapons and Licensing (Scotland) Bill
Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill

Bills to be introduced to the Scottish Parliament in 2015

Succession (Scotland) Bill

UK legislation

Counter-Terrorism and Security Act 2015
Intellectual Property Act 2014
Third Parties (Rights Against Insurers) Act 2010
Consumer Rights Act 2015
Small Business, Enterprise and Employment Act 2015

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 31-38).
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. 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.
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* [2013].

Consideration of improvements to procedures and system improvements

37. The SCJC will consider changes to practice and procedure in response to policy initiatives, by specific request, or of its own accord.
38. 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 2015/16:

- 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);
- developing a research brief on the operation of Chapter 33AA Ordinary Cause Rules (OCR) and the operation of case management in sheriff court family actions more generally with a view to informing the review and overhaul of OCR as part of the rules re-write project; 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 2015/16		
Category	Description	£
Staffing (Secretariat)	Deputy Secretary 3 Policy Officers	192,381
Staffing (Legal)	2.2 (Full Time Equivalent) Solicitors from LPPO 4 (Full Time Equivalent) solicitors for the Rules Rewrite Drafting Team	443,958
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.	40,000
General Expenses	Any other general costs of running the Council and committees e.g. stationery, catering etc.	8,500
Expenses	Reimbursement of SCJC and committee members' Travel & Subsistence, additional expenditure and financial loss.	19,000
Recruitment and Training	Ongoing recruitment of and training for new Council members.	5,000
Venue Hire and Hospitality	Occasional venue hire, hospitality and publicity costs may be required for conferences, events, facilitated workshops etc.	6,500
Total staffing		636,339
Total other		79,000
TOTAL		715,339

39. The SCTS 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 SCTS, which provides support to the judiciary). The costs attached to staffing the SCJC amount to approximately £636,339 per annum.

40. In addition, specialist communications support will be provided by the Judicial Office Communications Team amounting to around 0.2 of a Full Time Equivalent communications officer at a cost of approximately £6,190 per annum.
41. A specialist drafting team, made up of government lawyers, has been recruited during 2014/15 to carry out the rules revisions under the Rules Rewrite Project. That team consists of a lead drafter and three others. The cost of that team is approximately £195,200 per annum for 2105/16.
42. The SCJC has been allocated an additional £79,000 (as detailed in the table above) during 2015/16 to assist it in carrying out its functions. The SCJC's budget allocation is subject to review by the SCTS.

Governance

43. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ("the 2013 Act") sets out the statutory framework for the SCJC and that direction and oversight of the SCJC, in general terms, rests with the Lord President.
44. 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

45. 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 may be combined with the previous year's annual report, in accordance with section 5 of the 2013 Act.
46. 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.
47. 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.

48. 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

49. 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 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).
50. The Secretary to the SCJC is represented on the MJW 1 Programme Board (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

51. 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 2015/16

Subject	Action	Lead	Key dates
JUSTICE SYSTEM REFORM			
Courts Reform (Scotland) Act 2014	Implementation of Act in accordance with Commencement Orders; first set of rules anticipated for SCJC meeting in May 2015.	SCJC (with delegation to relevant committees where appropriate)	Royal Assent 11 November 2014; Commencement Orders awaited.
Rules Rewrite Project	<p>Rules Rewrite methodology:</p> <ul style="list-style-type: none"> • consider objective and vision of new rules; • review approaches undertaken in other jurisdictions; • develop annual rules rewrite programme enabling phases of rules to be prioritised; • create 'style guide' to underpin drafting of new rules; and • agree format and guidance for instructing drafting of rules. <p>This includes rules to implement Courts Reform (Sc) Act 2014 and wider SCCR recommendations.</p>	Rules Rewrite Committee (RRC)	Final report published April 2015. Structural review for rules rewrite to commence 2015/16.

Rules Rewrite Project – Rules	<ul style="list-style-type: none"> • Rules to support the increase to the Privative Limit • Creation of a specialist personal injury court, with civil jury trials • Rules to support changes to Judicial Review Procedure 	<p>Costs and Funding Committee</p> <p>Personal Injury Committee</p> <p>Rules Rewrite Committee</p>	Rules submitted to SCJC.
	<ul style="list-style-type: none"> • Creation of a Sheriff Appeal Court (civil) • Simple procedure 	<p>Rules Rewrite Committee</p> <p>Access to Justice Committee</p>	Draft rules anticipated to be before SCJC at its September meeting.

	<ul style="list-style-type: none"> • Compulsory pre-action protocols • Rules for enforcement / sanctions to ensure adherence to rules • Judicial case management 	<p>Personal Injury Committee</p> <p>Costs and Funding Committee</p> <p>Family Law Committee in first instance</p>	To be considered in due course.
Tribunals (Scotland) Act 2014	Monitoring of implementation.	SCJC (Secretariat to monitor)	Preparatory work to commence 2016 for SCJC functions in 2017.
Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland	SCJC response to Review approved at March meeting; remitted to Costs and Funding Committee to consider implementation.	Costs and Funding Committee	Implementation timescales being considered.
IMPLEMENTATION OF LEGISLATION			
Consideration of new and recent legislation	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:	SCJC and relevant committees	SCJC Secretariat will liaise with relevant policy teams as to timescales for implementation.

	<p><i>Acts of the Scottish Parliament</i></p> <ul style="list-style-type: none"> • Children and Young People Act 2014 • Revenue Scotland and Tax Powers Act 2014 • Housing (Scotland) Act 2014 <p><i>Bills before the Scottish Parliament:</i></p> <ul style="list-style-type: none"> • Human Trafficking and Exploitation (Scotland) Bill • Succession (Scotland) Bill • Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill <p><i>Bills to be introduced to the Scottish Parliament in 2015:</i></p> <ul style="list-style-type: none"> • Bankruptcy Consolidation Bill • Damages Bill <p><i>UK legislation</i></p> <ul style="list-style-type: none"> • Counter-Terrorism and Security Act 2015 • Intellectual Property Act 2014 • Third Parties (Rights Against Insurers) Act 2010 • Consumer Rights Bill • Small Business, Enterprise and Employment Bill 		
<p>Judicial Rate of Interest</p>	<p>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].</p>	<p>SCJC</p>	<p>No set date.</p>

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.
IMPROVEMENTS TO PROCEDURES			
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. Draft rules prepared.	Family Law Committee	Timescales tbc. SCJC to consult on draft rules alongside Scottish Government consultation.
Lay representation, lay support and party litigants	Review the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session; review the arrangements for lay representation and lay support in the sheriff court and the Court of Session; and 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.	Access to Justice Committee	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.	Access to Justice Committee	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"> • Scottish Government Bar Reporters Working Group • Justice Digital Strategy <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, the Consultative Committee on Commercial Actions and the Lord President's Advisory Committee.</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.
COMMUNICATIONS AND ENGAGEMENT			
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.	SCJC Secretariat	Ongoing.
SCJC website	Further development of the SCJC website, including improvements in branding, site navigation and web analytics.	SCJC Secretariat	Throughout 2015.
DEVELOPMENT, TRAINING AND GUIDANCE			
Records Management	SCJC to be added to the schedule to the Public Records (Scotland) Act 2011; records management plan to be updated.	SCJC Secretariat	Autumn 2015.
CORPORATE ACTIVITY			
Monitoring of	Scrutiny of current and anticipated Bills before Scottish and UK	SCJC	Ongoing. The SCJC

Legislation	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.	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.	Secretariat will liaise with policyholders to discuss implementation timescales in order to co-ordinate the SCJC's work for the year 2015/16.
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.
Annual business programme	The SCJC is under a statutory obligation to prepare an annual business programme for 2016/17 by 31 March 2016 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 2016.

Annual Report	The SCJC is under a statutory obligation to publish an annual report for 2015/16 as soon as practicable after 31 March 2015 and to lay the report before Parliament.	SCJC	To be considered at SCJC meeting of 11 May 2015.
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

52. Full information about the SCJC and its activities are available at 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.

53. Contact details for the SCJC are as follows:

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