



# Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

## 2013 asp 3

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 29th January 2013 and received Royal Assent on 5th March 2013**

An Act of the Scottish Parliament to establish the Scottish Civil Justice Council; to make provision about contributions in respect of criminal legal assistance; and for connected purposes.

### PART 1

#### SCOTTISH CIVIL JUSTICE COUNCIL

##### Modifications etc. (not altering text)

- C1** Pt. 1: power to apply conferred (1.4.2015) by [Tribunals \(Scotland\) Act 2014 \(asp 10\)](#), **ss. 65(2), 66(2), 83(2)** (with [Sch. 9 para. 8](#)); [S.S.I. 2015/116](#), **art. 2**

#### *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”).

##### Commencement Information

- II** S. 1 in force at 28.5.2013 by [S.S.I. 2013/124](#), **art. 2** (with [art. 3](#))

#### *Functions and powers*

### **2 Functions of the Council**

(1) The functions of the Council are—

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*Status: This version of this Act contains provisions that are prospective.*

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- (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<sup>[F1]</sup> the Sheriff Appeal Court or] the sheriff court,
  - <sup>[F2]</sup>(bb) to review the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016,]
  - (c) to prepare and submit to the Court of Session—
    - <sup>[F3]</sup>(i) draft civil procedure rules,
    - <sup>[F4]</sup>(ia) draft fees rules,]
    - <sup>[F5]</sup>(ib) draft inquiry 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,
  - (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, <sup>F6</sup>...
  - <sup>[F7]</sup>(aa) the Sheriff Appeal Court, and]
  - (b) the sheriff court.
- <sup>[F8]</sup>(6A) For the purposes of this Part, “ draft fees rules ” means drafts of such provision as the Court of Session may make by act of sederunt under section 105(1) or 106(1) of the Courts Reform (Scotland) Act 2014 (powers to regulate court fees). ]

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[<sup>F9</sup>(6B) For the purposes of this Part, “draft inquiry procedure rules” are draft rules prepared with a view to the making by the Court of Session of an act of sederunt under section 36(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.]

#### Textual Amendments

- F1** Words in s. 2(1)(b) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 18(a)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F2** S. 2(1)(bb) inserted (15.1.2016) by Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), s. 42(1), **Sch. 1 para. 1(2)(a)**
- F3** Words in s. 2(1)(c)(i) in s. 2(1)(c) renumbered as s. 2(1)(c)(i) (8.1.2016) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 13(2)(b)(i)** (with Sch. 9 paras. 4, 6, 8); S.S.I. 2015/422, art. 2
- F4** S. 2(1)(c)(ia) inserted after s. 2(1)(c)(i) (1.4.2015) by virtue of Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 31(2)(a)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F5** S. 2(1)(c)(ib) inserted (15.1.2016) by Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), s. 42(1), **Sch. 1 para. 1(2)(b)**
- F6** Word in s. 2(6) repealed (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 18(b)(i)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F7** S. 2(6)(aa) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 18(b)(ii)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F8** S. 2(6A) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 31(2)(b)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F9** S. 2(6B) inserted (15.1.2016) by Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), s. 42(1), **Sch. 1 para. 1(3)**

#### Commencement Information

- I2** S. 2 in force at 28.5.2013 by S.S.I. 2013/124, art. 2 (with art. 3)

### 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.

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#### Commencement Information

**I3** S. 3 in force at 28.5.2013 by [S.S.I. 2013/124](#), [art. 2](#) (with [art. 3](#))

## 4 Court of Session to consider rules

- (1) The Court of Session must consider any draft civil procedure rules<sup>[F10]</sup>, draft fees rules<sup>[F11]</sup> or draft inquiry procedure rules<sup>[F12]</sup> 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<sup>[F12]</sup>, draft fees rules<sup>[F13]</sup> or draft inquiry procedure rules<sup>[F14]</sup> (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—
  - <sup>[F14]</sup>(a) which relate to a matter in section 2(5).
  - <sup>[F15]</sup>(b) under section 105(1) or 106(1) of the Courts Reform (Scotland) Act 2014.]
  - <sup>[F16]</sup>(c) under section 36(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.]

#### Textual Amendments

- F10** Words in s. 4(1) inserted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014](#) (asp 18), s. 138(2), [Sch. 5 para. 31\(3\)\(a\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F11** Words in s. 4(1) inserted (15.1.2016) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#) (asp 2), s. 42(1), [Sch. 1 para. 1\(4\)\(a\)](#)
- F12** Words in s. 4(2) inserted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014](#) (asp 18), s. 138(2), [Sch. 5 para. 31\(3\)\(b\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F13** Words in s. 4(2) inserted (15.1.2016) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#) (asp 2), s. 42(1), [Sch. 1 para. 1\(4\)\(b\)](#)
- F14** Words in s. 4(3) renumbered as s. 4(3)(a) (1.4.2015) by [Courts Reform \(Scotland\) Act 2014](#) (asp 18), s. 138(2), [Sch. 5 para. 31\(3\)\(c\)\(i\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F15** S. 4(3)(b) inserted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014](#) (asp 18), s. 138(2), [Sch. 5 para. 31\(3\)\(c\)\(ii\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F16** S. 4(3)(c) inserted (15.1.2016) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#) (asp 2), s. 42(1), [Sch. 1 para. 1\(4\)\(c\)](#)

#### Commencement Information

**I4** S. 4 in force at 28.5.2013 by [S.S.I. 2013/124](#), [art. 2](#) (with [art. 3](#))

## 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”).

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- (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.

#### Commencement Information

**I5** S. 5 in force at 28.5.2013 by [S.S.I. 2013/124](#), [art. 2](#) (with [art. 3](#))

### 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.
- (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.