

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: HOMOLOGATION OF RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION ON THE CREATION OF A SCOTTISH CIVIL JUSTICE COUNCIL
From: HEAD OF LEGAL SERVICES		
Date: 11 JANUARY 2012	Ref: JM/EC	

1. PURPOSE OF REPORT/INTRODUCTION

- 1.1. The purpose of this report is to seek homologation by Committee for the Council’s response to the Scottish Government Consultation Paper seeking views on proposals for the creation of a Scottish Civil Justice Council to replace the existing Civil Rules Councils.
- 1.2. A copy of the response by the Council is outlined at Annex 1.
- 1.3. The closing date for response to the Paper was 22 December 2011.

2. BACKGROUND

This consultation followed on from the recommendations made in Lord Gill’s Scottish Civil Courts review. The recommendations made require changes to the civil procedure rules of Court and a body will be required to assist the Lord President to create the new rules. The consultation therefore sought the views on the proposals for a new Scottish Civil Justice Council, in place of the existing civil rules councils of the Court of Session and Sheriff Courts.

Currently the Court of Session has power to regulate civil procedure in Scottish Courts in terms of the Court of Session Act 1988 and the Sheriff Courts (Scotland) Act 1971.

The Sheriff Courts Rules Council reviews procedure and practice in civil proceedings and prepares the rules which govern such proceedings. Such rules are then passed to the Court of Session for approval.

The Court of Session Rules Council reviews procedure and practice for the Court of Session and prepares rules governing such procedure.

The current rules Councils do not consider the entire court system but rather the rules and procedures. The Scottish Government Consultation paper stated that the new Scottish Civil Justice Council should have the following functions:

- Review practice and procedure for civil proceedings in the Court of Session and the Sheriff Court;
- to prepare draft rules on procedure and submit them to the Lord President;
- “in carrying out these functions, the Council should consider how to make the civil justice system more accessible, fair and efficient, and to also consider broader issues of dispute resolution and avoidance, for example how best to develop mediation; and
- where appropriate, to make other recommendations for change”

3. PROPOSALS/CONSIDERATION

North Lanarkshire Council Response

The response contains input from the Council's Legal Services Department with a direct interest in the key areas.

A copy of the consultation response submitted is attached in Appendix 1 to this report.

4. SUMMARY OF THE COUNCIL'S RESPONSE TO THE CONSULTATION PAPER

The Council's complete response is contained at Appendix 1 of this report.

The Council agreed with the creation of a Scottish Civil Justice Council, principally due to the fact that a body with a remit for drafting the rules of the Court in addition to keeping under review the provision of civil justice by the Courts including structure, cost of litigation, jurisdiction, procedures and working methods would be advantageous. If it would ultimately create a body that would consider the effective delivery of justice to the general community through an accessible and affordable system which considers proportionality, value for money and fair allocation of resources then this would be beneficial. Furthermore, such a body would allow interested parties to make representation, creating a more transparent system.

The Council agreed that the new body should have a policy remit, should be able to make recommendations in relation to administrative justice, tribunals and make recommendations to the Scottish Ministers.

The Council's response also included a suggestion that, in terms of appointment to the new body, consideration should be given to the prospect of input from The Lord President, the Faculty of Advocates and the Law society of Scotland as is done just now with the Court of Session rules Council as opposed to appointment being solely chosen by Scottish Ministers and the Lord President.

5. RECOMMENDATIONS

5.1. The Committee is asked to homologate the report and the Council's response, as detailed in Appendix 1 to this report.



Head of Legal Services

For further information on this report please contact June Murray on 01698 302295.

Consultation on the Creation of a Scottish Civil Justice Council

Question 1

Do you agree or disagree that there should be a Scottish Civil Justice Council?

Agree.

A body with a remit for drafting the rules of the Court in addition to keeping under review the provision of civil justice by the Courts including structure, cost of litigation, jurisdiction, procedures and working methods would be advantageous. If it would ultimately create a body that would consider the effective delivery of justice to the general community through an accessible and affordable system which considers proportionality, value for money and fair allocation of resources then this would be beneficial.

At the moment the current Rules Councils focus on the drafting of rules alone and do not have an overview or responsibility to consider the whole court system. The creation of a new body as described in the consultation document would allow people to make representations and proposals for reform, the body would have the power to commission research, consider the cost of litigation, look at procedures and working methods. Ultimately, in order for such a body to work, it would be prudent to ensure that effective communication occurred between the court and court users.

Currently there is a duplication in effort by the two separate Councils; the Court of Session Rules Council and the Sheriff Court Rules Council. Creation of such a body would allow for the sharing of experience and expertise.

Question 2

Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

Agree.

The Council would agree that in terms of the size of the Scottish jurisdiction, it would be appropriate for a single body to be created that deals with technical rules of court and one that considers and implements policy in relation to the Civil Justice System as a whole. As the ultimate goal is to ensure an effective and accountable Civil Justice System, a policy remit is essential.

With regards to the remit however, due to the fact that the scope of the new body would be so large, it may be prudent to ensure that there are specific working groups solely dedicated to the rule making of the court in order time dedicated to rule making is not diluted and consequently jeopardised.

Question 3

Should the Council be able to make recommendations in relation to administrative justice and tribunals?

Yes. To ensure a standard approach across the board it would be beneficial for the Council to make recommendations in relation to administrative justice and tribunals, due to the fact that administrative justice and Civil Justice are interlinked. It would be prudent to ensure that individuals with the appropriate level of expertise are involved in this regard.

Question 4

Do you consider that the Council should have the ability to make rules of the court?

It would be prudent to have the Council drafting the rules of the court. As aforesaid, currently there is duplication in effort by both separate rules Councils and accordingly one body would be appropriate. As specified above, consideration should be given to the creation of two separate working groups within the Council that would deal specifically with Court of Session and Sheriff Court rules respectively. It may be that in doing so it, a common approach could be adopted to most issues with the working groups dealing differently where it is so required.

Question 5

Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than the Scottish Ministers.

Yes. The Lord President has the relevant expertise and knowledge to oversee the Civil Justice Council for Scotland. This will also maintain the separation between Government and the Judiciary, any responsibility resting with the Scottish Government would be inappropriate. It may be appropriate that the Council report and account to the Scottish Ministers with responsibility resting with the Lord President.

Question 6

Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Yes, given that the proposal is for the Council to have a remit in policy making it would be appropriate for the Council to make recommendations to the Scottish Ministers given the remit and responsibility of the Scottish Ministers with regards policy.

Question 7

Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which?

No comment.

Question 8

Do you consider that the proposed membership is appropriate?

The proposed membership broadly reflects the situation in terms of the Civil Justice Council (CJC) in England and Wales. The CJC has been reviewed and it was found that this provides an environment for useful dialogue and demonstrating different parties interests, considering separate interests. That said, it is considered that the proposal is slightly imbalanced in favour of lay persons and it may be better that the status quo remains with the option of lay representatives making representations that the new body should be obliged to consider.

Question 9

Should any other person / category of person be included in the membership?

As stated above, it would appear that the proposed membership is wide ranging and encompasses an appropriate number of representatives.

Question 10

Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit?

There may be issues in terms of transparency that the Lord President and Scottish Ministers can elect as they see fit. There are also concerns as to the separation of powers. It may be that appointment of members should require agreement between the Scottish Ministers and the Lord President and the procedure by which they pick them should be open to public scrutiny. At the moment, the Scottish Ministers can appoint one member to the Sheriff Rules Council. With that in mind, rather than Lord President and Scottish Ministers being able to appoint other members as they see fit, instead consideration should be given to the prospect of input of The Lord President, the Faculty of Advocates and the Law society of Scotland as is done just now with the Court of Session rules Council.

Question 11

Do you consider that members should receive expenses only, or should members be paid?

North Lanarkshire Council has no particular preference other than to say that due to the remit and extent of the proposed Council, it may be that the individuals involved will have to commit a significant amount of time to it. With that in mind, it may be appropriate that remuneration to some extent is considered.

Question 12

Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

It should be possible for groups and bodies with an interest in the civil justice system to make representations to the Council. It appears that the overarching goal of the proposed Council is to ensure that the Civil Justice System is fair and effective, accessible, affordable and efficient. In order to do so it would be fundamental to the operation of the Council to take representations from lay representatives.

Question 13

Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

In terms of ensuring accountability and transparency, an annual report is appropriate.

Question 14

Do you consider that any additional or alternative reporting arrangements would be appropriate?

No.

Question 15

Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

Whilst it is agreed that the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit, it would be more appropriate, in order to maintain separation of powers, that Scottish Ministers make representations to the Council as opposed to directing it, with the Lord President and Council being obliged to consider such representations.

Question 16

Do you have any other comments on the proposals outlined in this paper?

No comment