

Justice Committee

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Supplementary written submission from the Faculty of Advocates

PART 1 OF THE BILL

1. General Observations

1.1 The Faculty of Advocates (“the Faculty”) welcomes the proposed creation of the Scottish Civil Justice Council, together with the conjoining within that body of the roles presently carried out by the Court of Session and Sheriff Court Rules Councils.

1.2 The Faculty observes that there is scope for an overlap between the Council and the Scottish Parliament (and its Justice Committee) in relation to policy issues. In particular, the Faculty notes the breadth of the functions given to the Council under section 2 of the Bill, which includes a general requirement “*to keep the civil justice system under review*” (section 2(1)(a)). While the Council will have an important role to play, society as a whole, represented by the Parliament and its Committees, has an interest in and responsibility for broader policy issues concerning the civil justice system. The work of the Council should be seen as complementary to the role of the Parliament.

1.3 The Faculty observes that, in light of present uncertainty as to the manner in which UK Tribunals operating in Scotland are to integrate into the overall Scottish justice system, there is an inevitable degree of uncertainty as to the role which the Council should fulfil moving forward. The Faculty also acknowledges that, in its initial phases, it is anticipated that much of the work undertaken by the Council will deal with implementation of the recommendations of the “Gill Review”; it is further anticipated that, once this is done, the Council will face a less burdensome workload.

In light of the foregoing, the Faculty would suggest that there may be merit in a two stage approach – the creation of a body that would be charged with the implementation of the “Gill Review” recommendations, with the establishment of the Council on its permanent basis being postponed until after this process has taken place, by which time it would be hoped that the issues relating to Tribunals had been clarified. This would enable the Council to move forward on a clear footing and with a clear remit, which, it would be hoped, would not have to be changed in a piecemeal fashion over the following years.

1.4 The Faculty would suggest that the proposed membership of the Council may result in a Council which is too unwieldy to carry out its functions with ease. As matters stand, section 6 of the Bill provides for up to twenty members to sit on the Council at any one time. The Faculty would suggest that a smaller number (say, fifteen) would be more conducive to the Council fulfilling its functions.

2. Specific Observations

2.1 Section 1

In section 1, a “*body*” is established which is to be known as the Scottish Civil Justice Council.

The Faculty assumes that it is intended that this body is to have a legal personality and is to be a body corporate. On the basis that these assumptions are correct, it is suggested that it would be prudent to make these matters express within the drafting of section 1.

2.2 Section 2(2)(1)(a)

Further to the observations made at paragraph 1.2 above, it is submitted that this section should be revised so that this function of the Council is “*to keep the **practices and procedures of** [added words emphasised] the civil justice system under review*”.

2.3 Section 6

Further to the observations at paragraph 1.4 above, it is suggested:

- (a) that the proposed Council members listed at sections 6(1)(c) and (d) are not required and can be dispensed with; and
- (b) that the number of “LP members” as provided for in section 6(1)(i) could be restricted.

2.4 Section 9(3)(b)

The justification for the requirement that the Lord President to consult the Scottish Ministers before removing an LP member of the Council is not apparent to the Faculty. Parliament may wish to consider whether such a provision is necessary or desirable.

2.5 Section 13(2)

Section 13(2) provides that a person who is not a member of the Council may be appointed to be a member of any committee established by it. The Faculty assumes that it is intended that any such appointment would be made by the Council (rather than, for example, the committee in question). On the basis that this is correct, the Faculty would suggest that this matter is clarified (by addition of the words “by the Council” after “may be appointed”).

Financial memorandum

2.6. The Faculty notes that the Scottish Government expects that increased fees in the Court of Session will enable the Scottish Court Service to meet the costs of the SCJC (as well as other aspects of civil courts reform). In the context of the current

proposal to increase the privative jurisdiction of that court to £150,000, the Faculty questions the prediction that there will be an aggregate increase in fee income.

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