

# Scottish Government submission of 13 January 2023

## PE1983/A: Improve the transparency and accountability of Scottish legal courts

The Scottish Government considers both matters raised in the petition as operational matters which lie completely within the statutory responsibility of the court and the two bodies who assist the court in making new rules – The Scottish Civil Justice Council and the Criminal Court Rules Council.

The Scottish Courts and Tribunals Service (SCTS) is the independent public body which is responsible for the administration of the courts and tribunals of Scotland. The operation of the courts is the responsibility of the SCTS under the leadership of its independent board headed by the Lord President.

The Lord President is the most senior judge in Scotland and the Head of the Scottish Judiciary, with overall responsibility for making and maintaining arrangements for the efficient disposal of the business of all the courts in Scotland. He has statutory responsibilities in relation to areas including judicial conduct, training, welfare and deployment.

The Scottish Government regards the independence of the courts as an important constitutional principle and independence of the courts is enshrined in legislation by the Judiciary and Courts (Scotland) Act 2008.

As outlined in the SPICe briefing, the Scottish Courts and Tribunals Service provides information regarding the complaints process and court rules.

It may also be helpful to the Committee to describe the functions of the Scottish Civil Justice Council and the Criminal Court Rules Council

### The Scottish Civil Justice Council

The Scottish Civil Justice Council was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. It prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system in Scotland. The Scottish Civil Justice Council also has a wider role to advise and make recommendations on the civil justice system.

The creation of a single civil rules council for Scotland was one of the recommendations of the Scottish Civil Courts Review. Many of the review recommendations required new rules of court and the Scottish Civil Justice Council, which has oversight of the entire civil justice system, has taken this work forward over a number of years. The Council is also responsible for keeping the civil justice system under constant review.

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 proceedings in the Sheriff Appeal Court or the sheriff court;
- reviewing the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016;
- preparing and submitting to the Court of Session draft civil procedure rules, draft fees rules and draft inquiry procedure rules;
- advising and making recommendations on the development of and changes to the civil justice system in Scotland.

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

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.

### Criminal Court Rules Council

Rules for criminal proceedings (known as Acts of Adjournal) are made by the High Court of Justiciary and are prepared by the Criminal Court Rules Council.

The Criminal Courts Rules Council was established under section 304 of the Criminal Procedure (Scotland) Act 1995 with the following functions:

- to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland;
- to consider and comment on any draft Act of Adjournal submitted to it by the High Court.

The Criminal Courts Rules Council is an advisory body which may undertake public consultations to assist it in, for example, drafting rules or making recommendations.

I hope this reply is helpful in outlining the Scottish Government's position.