

CONSULTATION ON THE CREATION OF A SCOTTISH CIVIL JUSTICE COUNCIL



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Scottish Legal Action Group

Title Advocate *Please tick as appropriate*

Surname

Sutherland

Forename

Robert

2. Postal Address

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a)	Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)? <i>Please tick as appropriate</i> Yes No
(b)	Where confidentiality is not requested, we will make your responses available to the public on the following basis <i>Please tick ONE of the following boxes</i>
	Yes, make my response, name and address all available <input type="checkbox"/>
	<i>or</i>
	Yes, make my response available, but not my name and address <input type="checkbox"/>
	<i>or</i>
	Yes, make my response and name available, but not my address <input type="checkbox"/>

(c)	The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site). Are you content for your response to be made available? <i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes No
	<input type="checkbox"/> Yes <input type="checkbox"/> No

(d)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

x Yes

CONSULTATION QUESTIONNAIRE

Q1. Do you agree or disagree that there should be a Scottish Civil Justice Council?

Agree

Comments

We consider the proposed Scottish Civil Justice Council to be a welcome move because it could help keep the civil justice system procedure under continuous review, which we would hope would allow necessary changes to be developed and introduced more swiftly.

Q2. 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

Comments

The remit of any new SCJC should expressly include the requirement to ensure that the Scottish civil justice system meets addresses the needs and requirements of the public.

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Yes

Comments

A new SCJC should cover administrative tribunals for the reasons suggested in the consultation document - the proposed abolition of the national tribunals council and

the appropriateness of having a body in Scotland which does that work and unifies the courts and tribunals services when considering the provision of a modern joined up civil justice system.

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

Yes

Comments

We support the idea that Rules of Court could be made by the Council, but have no comment to make about the particular procedure which should be followed. We support the proposal because we believe that the development of court rules and procedures are a very important part of the civil justice system and ought to be brought within the remit of a Council as we believe it ought to function.. We do think that it is important that the Council contains a significant number of representatives from non-legal users of the system, but recognise the benefit to be gained from the practical and technical input of representatives from the legal professions. We would also like to see more widespread consultation on proposed reforms and in soliciting proposals for reform.

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

Disagree x

Comments

Neither. At the moment the proposal involves most members being appointed by the Lord President (and includes judges and sheriffs, and an employee of the Scottish Court Service), and 'at least' one civil servant appointed by the Scottish Ministers. Given the rôle that the Lord President has it would be better in our view if , his should be a new independent person, and chaired by a person who does not appoint its members and who is not one of the consultees or otherwise

responsible for implementing its recommendation. The body should be independent and reporting to the Scottish Parliament.

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Agree x

Comments

There must be a process by which differences of opinion between the proposed SCJC and the Lord President can be resolved.

If proposals/ changes are recommended to the Lord President and s/he agrees, they should be implemented/ enacted by Scottish Ministers.

If the SCJC proposes changes which are not supported by the Lord President, the SCJC should have the right to make recommendations in its own right.

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Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer.

No x

Comments

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

No

If yes, go to question 10.

Comments

The Consultation document only refers to persons with knowledge and experience of the lay advice sector. It does not refer to specific numbers. The proposed maximum size of the Committee is 15. That seems to be sensible, but we would like to suggest that at least one third of those places are 'reserved for persons with experience and knowledge of consumer affairs, persons with experience and knowledge of the lay advice sector, persons able to represent the interests of particular kinds of litigants, for example businesses or employees'.

Q9. Should any other person / category of person be included in the membership? Please give reasons.

Yes

Comments

See all of the above, and in particular Answer 8, above

We would also like to see persons who are actively involved in the provision of consumer advice and representation to be included - rather than just members and employees of consumer lobby organisations.

Q10. 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? If not, why not?

No preference

Comments

Our own preference would be for an appointment and recruitment system which is transparent but also flexible. Given our views on how the body should be established and led, the assumptions inherent in the question do not readily apply. Systems procedures should in any event be developed to achieve our overall aims, and to prevent the perception of 'personal fiefdoms' arising.

Q11. Do you consider that members should receive expenses only, or should members be paid?

Expenses Paid

Comments

People who are employees who are released from their posts in order to sit/attend, and whose salary is unaffected by membership/work of this committee should not be paid.

People who work part time or are self employed and who are taking on extra work should be paid, otherwise they will be deterred.

Q12. 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?

Agree Disagree

Comments

The SCJC should be able to determine its own remit / workload – albeit under a general or over-arching remit to 'devise, develop and deliver improvements in the rules, processes, procedures and systems in any court or courts and in any jurisdictions of courts in the interests of justice, efficiency and efficacy.' We believe that this would be strengthened by working with other groups and bodies, and by consulting widely as we have already stated.

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Agreex

Comments

An annual report is standard practice in terms of transparency and accountability.

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

No preference

Comments

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Reporting should be to the Scottish Parliament.

Q15. 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?

Disagree

Comments

The Council should have regard to any advice or recommendation from the Scottish Ministers and Lord President – but in the interests of independence and transparency - should not be bound by it.

Q16. Do you have any other comments on the proposals outlined in this paper?

Yesx

Comments

The development of a Scottish Civil Justice Council has the potential to provide an opportunity to extend and deepen public involvement in the development of the civil court system under a general or over-arching remit to 'devise, develop and deliver improvements in the rules, processes, procedures and systems in any court or courts and in any jurisdictions of courts in the interests of justice, efficiency and efficacy.'