

# 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

Friends of the Earth Scotland

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Church

Forename

Mary

### 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)?

*Please tick as appropriate*  Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(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?

*Please tick as appropriate*  Yes  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*

Yes

## CONSULTATION QUESTIONNAIRE

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

Agree  Disagree  No preference

We support the creation of a Scottish Civil Justice Council with broadly the functions outlined in the consultation paper. We consider that at present, the work of the two Rules Councils are not widely enough understood, and agree that they do not provide a strategic overview of the courts systems.

**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  Disagree  No preference

We agree that the functions of the Council should have a policy remit. However, given this policy remit, we feel strongly that the system of appointing members to the Council should be transparent and open, and, if our comments in Q10 below could not be taken into account, we could not support the Council having a wider policy remit.

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

Yes  No  No preference

If the Administrative Justice and Tribunals Council and its Scottish Committee is abolished, it would make sense for its functions to be taken on by the new Civil Justice Rules Council to enable a fuller ‘whole system’ viewpoint.

Including administrative justice and tribunals under the purview of the new Council would also help to ensure that the importance of this area of justice is more formally recognised and acknowledge that some areas of law may cross into both systems.

**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  No  No preference

Whilst many rules of court are purely technical in nature, the way that cases are heard are vitally important in the conduct of a case and whether the courts provide access to justice for the litigants who need it most. We support the Council having the ability to make rules of court, but that process must be as transparent as possible.

There should be accessible, current information available on the Council’s website (we note the Court of Session Rules Council minutes are not usually posted until the following meeting when they are presumably approved; given the long gaps between meetings, draft minutes would be helpful), and the Council should consult in all but the most exceptional of circumstances. It is recognised that if the Council is to be under the ‘managerial’ responsibility of the Lord President, it must be independent, however the Council will perform an important public function which must be open to scrutiny.

Our view is that the Council should consult before adopting any rule, and that rules should be laid before the Scottish Parliament.

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

Agree  Disagree  No preference

We agree, but only under the proviso that appointments to the Council should be overseen by the Public Appointments Commissioner (see response to Q10). In that way, the process of appointment would have the safeguard of being transparent and open. We consider that without this safeguard, we could not support the policy function being given to the Council as indicated in Q2 above.

**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  Disagree  No preference

Yes, if the Council has a policy function (as per responses to Q2 & Q5). Part of that policy function would be to ensure the court system is designed to deliver access to justice to the litigants who need it most.

**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.**

Yes  No  No preference

No, unless it is not possible for the Council to be regulated by the Public Appointments Commissioner (see Q10), in which case the policy function should remain with the Scottish Government.

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

Yes  No  No preference

If yes, go to question 10.

Historically there has been an under representation of solicitors practicing in legal aid work on the two existing Rules Councils. Time commitments may mean membership is limited solicitors from large commercial firms. Paying members could address this (see response to Q11).

It is understood that in order for Council membership to be of a manageable size, is it not possible to have specialist members covering all areas of the law, e.g. environmental law, or family law. However, appointing such specialists to sub-committees and ad-hoc groups established to carry out specific parts of the Council's work, alongside the requirement for the Council to consult and work with groups and bodies with an interest in civil justice, should remedy this.

All appointments to the Council, and any sub-committees or ad-hoc groups should be regulated by the Public Appointments Commissioner.

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

Yes  No  No preference

As per Q8, it is important to ensure that solicitor members represent the breadth of the sector, and therefore include legal aid solicitors.

**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?**

Agree  Disagree  No preference

We strongly disagree, and propose that appointments to the Council should be regulated by the Public Appointments Commissioner, to ensure openness and transparency, rather than as the Lord President and Scottish Ministers see fit.

If for any reason it is not possible for appointments made by the Lord President to be regulated by the Public Appointments Commissioner, then appointments should be made by Scottish Ministers under this regulation.

As and when the need arises for ad hoc or temporary members, sub-committees and working groups, such positions should also be regulated by the Public Appointments Commissioner.

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

Expenses only  Paid  No preference

Members should be paid to ensure that appointments are open to individuals (and their expertise) who fall into these categories but either work for small or impecunious firms and organisations, or are self / un employed, not simply individuals from larger firms who may be better able to absorb the time and financial cost of involvement in the Council.

This could be particularly important in the early years of the Council's existence, which will be devoted to carrying out the procedural changes required to implement Lord Gill's recommendations.

**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  No preference

Where the Council carries out work through sub-committees and ad-hoc groups, appointments to these should be regulated by the Public Appointments Commissioner, to ensure openness and transparency.

The Council should be required to consult and work with groups and bodies with an interest in civil justice to ensure that specialist knowledge is accessed.

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

Agree  Disagree  No preference

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

Yes  No  No preference

In addition to the annual report being laid before Parliament, the report should be made available on the Council and other relevant websites, promptly and accessibly.

Information such as Minutes, and any publications should be made available on the Council's website promptly, and accessibly.

When the Council are considering a specific piece of work, it would be good practice for background information to be made available to the public via the website.

**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?**

Agree  Disagree  No preference

Yes, particularly if the Council has a policy remit.

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

Yes  No

We are deeply concerned about the lack of transparency and openness in relation to current appointments to the Rules Councils. We particularly wish to ensure that the new single Council operates in an open and accountable way, and believe that the best way to ensure this is through regulation by the Public Appointments Commissioner.

For example, we are aware that the Law Society's recent nominations for lawyer members to the Court of Session Rules Council were made by the Society's Civil Justice Committee without any external consultation or advertisement. That the current Council of 13 members and 5 invited attendees includes only one woman, is strongly indicative of the Council's lack of representation.