Scottish Civil Justice Council and Criminal Legal Assistance Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 26 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Jenny Marra

25  In section 2, page 1, line 18, at end insert—

<(  ) to provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system,

(  ) to provide such advice on matters relating to the civil justice system as may be requested by the Scottish Ministers, and

(  ) to consider how to make the civil justice system more accessible, fair and efficient.>

Jenny Marra

26  In section 2, page 1, leave out line 23

Jenny Marra

27  In section 2, page 2, line 6, at end insert—

<(  ) Before preparing draft rules under subsection (1)(c) the Council must consult such persons as it considers appropriate.>

Kenny MacAskill

1  In section 2, page 2, line 7, leave out subsection (4) and insert—

<(4) For the purposes of this Part, “draft civil procedure rules” are draft rules which relate to a matter in subsection (5).

(5) Those matters are—

(a) any matter relating to a court within the remit of the Council which the Court of Session may regulate by act of sederunt,

(b) any matter relating to a court within the remit of the Council in anticipation of the Court of Session being given power to regulate the matter by act of sederunt, or

(c) any matter relating to a proposed court in anticipation of—>
(i) the court being established and added to the remit of the Council, and

(iii) the Court of Session being given power to regulate the matter by act of
sederunt.

(6) The courts within the remit of the Council are—

(a) the Court of Session, and

(b) the sheriff court.

Section 3

Kenny MacAskill

2 In section 3, page 2, leave out lines 16 to 19

Jenny Marra

28 In section 3, page 2, line 24, at end insert—

<(  ) make proposals for research into the civil justice system,>

Jenny Marra

29 In section 3, page 2, leave out lines 25 and 26

Jenny Marra

30 In section 3, page 2, line 27, at end insert <under this section or section 2(1)>

After section 3

Margaret Mitchell

12 After section 3, insert—

<Consultation of the Council

Nothing in this Act requires the Scottish Ministers to consult the Council on any
matter.>

Section 4

Kenny MacAskill

3 In section 4, page 2, line 34, after <approves> insert <draft>

Kenny MacAskill

4 In section 4, page 2, line 36, leave out <civil procedure rules> and insert <rules which relate to a
matter in section 2(5)>
Section 6

Jenny Marra

31 In section 6, page 3, line 19, after <least> insert <2 and not more than>

Jenny Marra

32 In section 6, page 3, line 22, leave out <at least>

Jenny Marra

33 In section 6, page 3, line 23, leave out <at least>

Jenny Marra

34 In section 6, page 3, leave out lines 24 to 30 and insert—

<(  ) at least 8 and not more than 10 persons (“LP members”) who are not judges, practising advocates or practising solicitors, and who include—

(i) at least 2 persons with experience and knowledge of consumer affairs,

(ii) persons with knowledge of the non-commercial legal advice sector, and

(iii) persons able to represent the interests of different categories of litigants.>

Section 7

Jenny Marra

35 In section 7, page 4, line 10, at end insert—

<(  ) In appointing persons to be members of the Council, the Lord President must ensure that the proportion of both men and women appointed is at least 40 per cent of the membership.>

Jenny Marra

36 In section 7, page 4, leave out line 15

Kenny MacAskill

5 In section 7, page 4, line 16, at end insert—

<(2A) In preparing the statement of appointment practice the Lord President must have regard to the principles in subsection (2B).

(2B) The principles are—

(a) appointments to the Council should be made fairly and openly, and

(b) so far as reasonably practicable, all eligible persons should be afforded an opportunity to be considered for appointment.>
Margaret Mitchell
13 In section 7, page 4, line 16, at end insert—
<(< )> When preparing a statement of appointment practice under subsection (2), the Lord President must ensure that the statement applies as far as practicable guidance set out in the code of practice prepared and published under section 2(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), with such modifications as the Lord President considers to be appropriate to the circumstances of appointing members to the Council.
(< )> Before publishing a statement of appointment practice under subsection (2), the Lord President must consult the Public Appointments Commissioner for Scotland.>

Jenny Marra
37 In section 7, page 4, leave out line 22

Section 9

Jenny Marra
38 In section 9, page 5, leave out line 23

Section 10

Jenny Marra
39 In section 10, page 5, leave out line 33

Section 11

Kenny MacAskill
6 In section 11, page 6, line 5, leave out <chair meetings> and insert <be chair>

Kenny MacAskill
7 In section 11, page 6, line 6, leave out <do so> and insert <be chair>

Kenny MacAskill
8 In section 11, page 6, line 11, leave out <chair meetings> and insert <be chair>

Kenny MacAskill
9 In section 11, page 6, line 13, leave out <, from the judicial members,>

Kenny MacAskill
10 In section 11, page 6, line 14, leave out <chairing member> and insert <chair>
Section 12

Jenny Marra

40 In section 12, page 6, line 22, at end insert—

<(3A) The Council must ensure that its proceedings and those of any committees and sub-committees established by it are held in public.
(3B) Despite sub-section (3A), the Council or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.
(3C) The Council must publish—
(a) agendas for its proceedings and those of its committees and sub-committees,
(b) the papers relating to those proceedings,
(c) such reports of those proceedings as it thinks fit.
(3D) Despite sub-section (3C), the Council may decide that all or part of any agenda, paper or report need not be published.
(3E) The Council must publish a statement setting out—
(a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
(b) the circumstances in which agendas, papers and reports need not be published.>

Section 16

Kenny MacAskill

11 In section 16, page 7, line 30, at beginning insert <draft>

Section 19

Jenny Marra

41 In section 19, page 9, line 34, leave out <has disposable income of, or exceeding, £68 per week and>

Jenny Marra

42 In section 19, page 9, line 36, leave out from <or> and end of line 37 and insert <and
( ) has disposable income or capital exceeding such amounts as may be prescribed by regulations made under section 33ZA(1).>

Margaret Mitchell

14 In section 19, page 10, leave out lines 1 to 11 and insert—

<( ) It is for the Board to determine the amount of and collect any contribution payable by the client under subsection (2).>
Section 20

Jenny Marra
43 In section 20, page 10, line 23, leave out <has disposable income of, or exceeding, £68 a week and>

Jenny Marra
44 In section 20, page 10, line 25, leave out from <or> to end of line 26 and insert <and
( ) has disposable income or capital exceeding such amounts as may be prescribed by regulations made under section 33ZA(1).>

Margaret Mitchell
15 In section 20, page 10, line 30, leave out from beginning to end of line 5 on page 11 and insert—
<( ) It is for the Board to determine the amount of and collect any contribution payable by A under subsection (3).>

Margaret Mitchell
16 In section 20, page 11, leave out lines 10 and 11

Margaret Mitchell
17 In section 20, page 11, line 12, leave out <second> and insert <first>

Margaret Mitchell
18 In section 20, page 11, line 16, leave out <third> and insert <second>

After section 21

Graeme Pearson
45 After section 21, insert—
<Refund of contributions for criminal legal assistance in certain circumstances>

Refund of contributions for criminal legal assistance in certain circumstances
After section 25AD of the 1986 Act, inserted by section 20, insert—

“25AE Refund of contributions for criminal legal assistance in certain circumstances
At the conclusion of the proceedings, the court in which those proceedings are concluded may order any contribution for criminal legal assistance due or paid by virtue of this Act to be remitted or refunded to the person from or by whom, or in respect of whom, the contribution was due or paid if—

(a) the person has been acquitted of an offence, and

(b) the court considers that it is in the interests of justice for the contribution to be refunded.”.>
Section 22

Margaret Mitchell
19 In section 22, page 12, line 5, leave out <may> and insert <must>

Margaret Mitchell
20 In section 22, page 12, line 8, at end insert—

\(<( \ ) \) Regulations made under subsection (1) must include a definition of—

(i) disposable income, and

(ii) disposable capital.>

Margaret Mitchell
21 In section 22, page 12, line 8, at end insert—

\(<( \ ) \) Regulations made under subsection (1) must not make provision for the solicitor providing the assistance to determine the amount of, or collect, a contribution.>

Margaret Mitchell
22 In section 22, page 12, leave out lines 16 and 17

Margaret Mitchell
23 In section 22, page 12, line 29, at end insert—

\(<33ZB \text{ Regulations about refunding contributions in certain circumstances} \>

The Scottish Ministers must by regulations make arrangements for any contribution for criminal legal assistance due or paid by virtue of this Act to be remitted or refunded in a case where proceedings are concluded without the person from whom, or in respect of whom, the contribution was due or paid, being convicted.”.>

Before section 24

Margaret Mitchell
24 Before section 24, insert—

\(<\text{Report on operation and effect of Part 2} \>

(1) The Scottish Ministers must, before the end of the 3 year period, lay before the Scottish Parliament a report on the operation and effect of Part 2 of this Act.

(2) The report must, in particular, contain information about the effect that the operation of Part 2 has had on—

(a) the efficient and effective functioning of the criminal justice system, and

(b) access to justice, having particular regard to access to justice for persons living in rural areas.
(3) The Scottish Ministers must, as soon as practicable after the report has been laid before the Parliament, publish the report in such manner as they consider appropriate.

(4) In this section “the 3 year period” means the period of 3 years beginning with the day on which any provision in Part 2 comes into force.