



## Scottish Civil Justice Council and Criminal Legal Assistance Bill

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Bill Number:	SP Bill 13
Introduced on:	2 May 2012
Introduced by:	Kenny MacAskill MSP (Government Bill)
Passed:	29 January 2013
Royal Assent:	5 March 2013

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### Passage of the Bill

The [Scottish Civil Justice Council and Criminal Legal Assistance Bill](#) was introduced in the Scottish Parliament on 2 May 2012. The Justice Committee was designated the lead committee at Stage 1 and took oral evidence on the general principles of the Bill over four weeks commencing on 26 June 2012. The Committee's Stage 1 Report was published on 4 October 2012. The Stage 1 debate took place on 25 October 2012. Stage 2 proceedings took place on 13 November 2012, and the Stage 3 debate happened on 29 January 2013. The Bill received Royal Assent on 5 March 2013 to become the [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013](#).

### Purpose and objectives of the Bill

The purpose of the Bill was twofold:

- to create a Scottish Civil Justice Council with responsibility for formulating policy and drafting court procedure rules in relation to civil justice matters; and
- to require those accused of a crime to make a financial contribution to their legal aid bill were they were assessed as able to do so

### Provisions of the Bill

The Bill sought to create a Scottish Civil Justice Council (SCJC) to replace the current Sheriff Court and Court of Session Rules Councils. In addition to drafting court procedure rules, it was also intended that the Council would have a broader "policy" remit. The Bill therefore sought to give the Council a

role in advising the Lord President and Scottish Ministers on the future development of the civil justice system. The Bill envisaged that the Council would have between 14 and 20 members, including up to six “Lord President members” drawn from across the spectrum of those with an interest in civil justice.

In addition, the Bill sought to make changes to legal aid for those accused of a crime to introduce the requirement to make a financial contribution. To do so, the Bill sought to change the “undue hardship” test used to assess financial eligibility in Criminal Legal Aid so that accused people with income and/or capital assets above set thresholds would be required to make a graduated contribution to their legal aid bill.

The Bill also sought to extend the “undue hardship” test to an additional form of legal assistance known as Assistance By Way of Representation (ABWOR). The Scottish Government’s intention was that this would primarily affect ABWOR for those who plead guilty to a summary criminal charge.

### **Parliamentary consideration**

The main issues identified at Stage 1 were:

- whether the powers and functions given to the SCJC were appropriate
- whether the SCJC had the right balance of legally qualified and non-legally qualified members and how such members were to be recruited
- whether access to justice would be compromised by the criminal legal assistance provisions because threshold amounts had been set too low
- whether those who were acquitted should receive a refund of their legal aid contributions
- the effect on the wider justice system of placing the requirement on solicitors to collect legal aid contributions directly from clients in most circumstances

The Justice Committee’s Stage 1 Report concluded that the Scottish Civil Justice Council was appropriately set up to do its job, but it recommended that the Scottish Government should give further consideration to how the principles of open recruitment could be embedded in the Bill. It also recommended that the deputy chair of the Council should be capable of being a non-legally qualified member.

Scottish Government amendments reflecting these concerns were agreed to at Stage 2. In addition, an amendment giving the Council an express ability to conduct research was agreed to. Amendments which sought to increase the representation of non-legally qualified people on the Council and which sought to make explicit reference to guidance from the Commissioner of Public Appointments in Scotland were disagreed to.

The Stage 1 Report accepted that it was fair in principle to require accused people to make contributions to their legal aid bill. It also recommended that the Scottish Government looked again at whether those who were acquitted should receive refunds and whether the Scottish Legal Aid Board would be better placed than solicitors to collect contributions from accused people. It expressed concern that savings generated through the Bill's proposals could be wiped out if costs in other parts of the justice system increased and asked the Scottish Government to report to the Scottish Parliament on the Bill's implementation after three years.

Amendments which sought to remove threshold figures from the face of the Bill, require refunds for acquitted people and oblige the Scottish Legal Aid Board to collect contributions from accused people were disagreed to at Stage 2.

Many of the amendments discussed at Stage 2 were revisited at Stage 3 and again disagreed to. A Scottish Government amendment raising the income threshold at which a contribution would become payable from £68 to £82 was agreed to. A Scottish Government amendment enabling the Scottish Legal Aid Board to introduce a collections service for solicitors – for which solicitors would be charged at cost – was also agreed to.

The Bill, as amended at Stage 3, was passed following a division: For 62, Against 53.