Thank you for inviting me to submit evidence to your Committee.

This is the most important Bill affecting civil justice in Scotland for over a century. It provides the framework for a programme of fundamental reform.

Our system of civil justice has many strengths; but it must adapt to changing times, to consumer expectations and to new technologies. The concerns of government that the court system was in need of systematic overhaul led to the setting up of the Scottish Civil Courts Review in 2007, and to a comprehensive report in 2009 identifying many weaknesses and recommending many changes. While these are detailed, they are all based on the fundamental principles that the civil justice system:

- should secure fair and just outcomes
- should be accessible and sensitive to the needs of those who use it
- should encourage early resolution of disputes and deal with cases as expeditiously and economically as is appropriate
- should use resources efficiently, effectively and proportionately.

I believe that this Bill will deliver on those principles.

The privative limit of £150,000 is an essential component of the proposed reforms. It will have the effect of transferring significant amounts of business, currently litigated in the Court of Session, to the sheriff courts. The Court of Session will be free to concentrate on cases of particular complexity, importance and value. Meanwhile, a specialist Scotland-wide personal injury sheriff court, offering the option of civil jury trial, will provide the benefits of greater judicial specialisation and consistency in decision-making for injury claims. While I expect that the specialist personal injury court will deal with the bulk of the personal injury business, consumer choice will be retained. Claimants will still be able to raise personal injury cases in the local court. In due course specialist sheriffs will be appointed in other areas of legal practice. Cases will find their own level, in light of their particular nature, importance and value. Litigants’ costs will be lower, and procedures will be more efficient.

In the same way, the setting up of the Sheriff Appeal Court, with a criminal and civil jurisdiction, will allow appeals from the sheriff and summary sheriff to be heard either by a single Appeal Sheriff or by a panel of Appeal Sheriffs, as appropriate. This is another instance of cases finding their own level, and of costs being limited to what is necessary and fair.

The creation of a new class of summary sheriffs, dealing with summary crime, housing and small financial claims will free up sheriffs to concentrate on work more
appropriate to their skills including solemn criminal trials and relevant civil work. At present the handling of family law cases in the sheriff courts leaves much to be desired. Even straightforward cases involving questions such as contact with children can take many days at great cost. We need a system in which family law cases are decided expeditiously and expertly by sheriffs who are familiar with the subject and can resolve disputes with an appropriate degree of informality. This will be one of the great strengths of the summary sheriff jurisdiction. These reforms will bring about cost savings and efficiencies. The absence of this third judicial tier, a vital element in most English-speaking jurisdictions, has been a flaw in our court system for too many years.

These reforms will be supported by arrangements for judicial case management based on the recommendations in the Report of the Scottish Civil Cases Review. Case management, being an essentially administrative reform, does not much feature in the Bill, but it is an integral part of the proposed reforms. Case management, properly supported by an effective IT provision, will enable the court, and not the litigants, to manage the pace of litigation with the best interests of justice in mind. It will achieve significant benefits in the efficient handling of litigation in terms of time and cost savings. It will create a much needed cultural change on the part of the judiciary, the legal profession and litigants.

With the creation of the Scottish Civil Justice Council, which is already operating well, the mechanism for delivering the rules reforms which will give effect to the Bill provisions is firmly in place.

As with the legislation to create the Council, the Courts Reform (Scotland) Bill is part of the Scottish Government’s Making Justice Work Programme. Making Justice Work has been an outstanding success. It will provide the framework for the many rules changes to follow. The Vision Statement for Making Justice Work summarises everything that I wish for in civil justice reform:

“To create a cost effective, proportionate, accessible and efficient court structure in which: cases and appeals are heard by the right court in both civil and criminal cases, reserving the use of the highest courts for the most serious and complex cases; court procedures are as easy as possible for all to understand and access; and cases are dealt with as efficiently as possible once they come to court”

I am satisfied that this Bill will assist the SCS in achieving those aims.

In my introduction to the Report of the Scottish Civil Courts Review I said this: “Our proposals should not be seen as a series of good ideas, the easiest and cheapest of which can be cherry-picked for the purposes of legislation. That course would simply perpetuate the ad hoc approach that has obstructed true progress in civil justice for so long. We put these proposals forward as an integrated solution.”

I am grateful to the Cabinet Secretary for Justice. He has acknowledged from the outset that the proposals of the SCCR have to be seen in their entirety and that we should not shrink from radical reform. This Bill represents a robust, carefully-balanced, and integrated approach which if adopted will provide Scotland with a civil justice system fit for the 21st century.
Brian Gill
Lord President of the Court of Session
19 March 2014