

SPICe Briefing

The Scottish Civil Court System

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This Briefing provides an overview of the civil court system in Scotland, including a description of the main civil courts and the hierarchy associated with them. It also provides an introduction to the key terminology associated with the civil courts and a brief overview of other bodies and individuals associated with the civil courts system. The Briefing is intended to be useful background for those with an interest in the [Courts Reform \(Scotland\) Bill](#).

For an overview of the system of criminal courts in Scotland see the SPICe Briefing entitled [The Scottish Criminal Justice System: the Criminal Courts](#) (McCallum 2011).



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EXECUTIVE SUMMARY

The justice system in Scotland is split into two distinct parts: the criminal justice system and the civil justice system.

The distinction between the two parts of the system is as follows: the criminal justice system exists to prosecute, or otherwise deal with, those who commit crimes. On the other hand, the civil justice system exists to give people and organisations a way to protect and enforce their legal rights and to regulate disputes in respect of those rights. Each part of the Scottish justice system has its own courts and processes for dealing with cases and appeals.

In Scotland, the pursuer is the individual or organisation who brings a civil court action, the defender is the party against whom the action is raised.

In most respects, the Scottish civil justice system is distinct from that of the rest of the UK and responsibility for civil justice is largely devolved to the Scottish Parliament. The main parts of the civil justice system which are reserved to Westminster are the UK [Supreme Court](#) and the UK-wide specialist tribunals which operate in Scotland (e.g. [the employment tribunals](#)).

The sheriff courts are important civil courts in Scotland in the sense they have 'jurisdiction', ie authority to hear and determine a case, in respect of a wide range of civil (and criminal) matters. There is a sheriff court in every city and in a number of towns.

The Court of Session sits only in Parliament House in Edinburgh. It is divided into the Outer and Inner House.

The structure of the civil courts in Scotland is unusual in that the jurisdiction of the Court of Session and the sheriff courts significantly overlap. Many types of civil court action can be raised in either court according to the pursuer's choice.

The sheriff courts and the Court of Session can act both as courts of first instance (ie courts that hear and decide a case for the first time) and appeal courts, depending on circumstances. The final domestic court of appeal from the Scottish civil courts is the UK [Supreme Court](#) although it, in turn, is subject to the decisions of the [European Court of Justice](#) in respect of European Community Law.

The First Minister has a number of specific duties in relation to the courts, including those relating to judicial appointments and judicial conduct. However, judges are not subject to ministerial control as the independence of the courts has always been regarded as an important constitutional principle (enshrined in legislation for the first time by the Judiciary and Courts (Scotland) Act 2008 (asp 6)).

Operational functions relating to the day to day administration of the courts are carried out by the [Scottish Court Service](#). Its website contains a range of useful information on the Scottish civil courts and other bodies and individuals associated with the courts.

AN INTRODUCTION TO THE CIVIL JUSTICE SYSTEM

The criminal justice system is probably the best known part of the justice system in Scotland, existing to prosecute (or otherwise deal with) those who commit crimes. However, a very important role is also played by the civil justice system which is focused on the legal rights of individuals and organisations and on resolving disputes in respect of those rights.

A further distinction is made between two types of civil law – public law and private law. As its name suggests, public law governs the actions of public bodies in their relationships with private individuals. On the other hand, private law deals with the rights and obligations of individuals and bodies such as companies towards each other.

Topics covered by public law, for example, include human rights; asylum and immigration; education; housing; planning; tax and social security. Areas covered by private law include, for example, disputes about contracts; family law issues; personal injury cases; bankruptcy and insolvency; and disputes about consumer goods and services.

DEVOLUTION AND THE CIVIL JUSTICE SYSTEM

The Scotland Act 1998 (c 46) devolved substantial areas of civil law to the Scottish Parliament and, since the Parliament's creation, it has legislated in a number of those areas of law, including family law, property law, the law of bankruptcy, planning law and housing law. However, unlike the situation with Scottish criminal law, significant areas of civil law are reserved to the UK Parliament to legislate on, e.g. employment law, asylum and immigration, company law, tax and social security.

On the other hand, the administration of the Scottish civil justice system is distinct from the rest of the UK and largely devolved to the Scottish Parliament. This includes the court structures, the court procedures, the day-to-day running of the courts and the provision of publicly funded legal services (e.g. legal aid). The two most significant structures reserved to Westminster are the UK [Supreme Court](#) (the final domestic appeal court in relation to Scottish civil law matters) and a large number of the specialist tribunals which operate in Scotland, such as [the employment tribunals](#).

USEFUL TERMINOLOGY

The Scottish civil court system has its own terminology which is distinct from the terminology of the Scottish criminal courts and, in many respects, from the civil court system in England.

Key definitions

In Scotland the **pursuer** is the individual or organisation who brings a civil court action and the **defender** is the party against whom the action is raised. In England the **claimant** (formerly the **plaintiff**) brings an action against the **defendant**.

Most civil court actions in Scotland are commenced by a document known as an **initial writ** or **summons**¹ (in the sheriff courts) or a **summons** (in the Court of Session) which the pursuer lodges with the relevant court and which is then served on the defender.

However, certain types of civil court action in Scotland require to be commenced by way of a **petition**, for example an action for judicial review, used to challenge the exercise of power by

¹ An initial writ is used in Ordinary Cause Procedure in the sheriff court and a summons is used for Summary Cause Procedure and Small Claims Procedure. See further below in relation to the different types procedure associated with the sheriff court.

public bodies. In such an instance the person or body raising the court action is the **petitioner**, the person resisting the petition, or making representations to the court about it, is called the **respondent**.

Perhaps confusingly, the **respondent** is also the term used in all appeals in civil cases (including those not commenced by way of petition) where it refers to the party resisting the appeal. The **appellant** is the party bringing the appeal.

A court is said to have **jurisdiction** in respect of a legal dispute where it has authority to hear and determine a case. A court is acting as a **court of first instance** when it is carrying out this task for the first time in respect of a particular case, as opposed to the situation where it is acting as an **appeal court**.

The distinction between fact and law is important in the context of appeals. Sometimes it is possible to appeal a decision on a question of fact and a question of law, in other instances it is only possible to appeal a decision on a question of law. An **appeal on a question of fact** challenges a decision on the facts at issue between the parties, whereas an **appeal on a question of law** challenges a decision as to whether a particular legal rule exists or what its content is, or indeed whether the legal rule applies to the facts of the particular case.

Remedies

Whereas the criminal justice system is focused on sentences designed to act as a punishment or deterrent (such as a fine or a period of imprisonment), civil court proceedings are brought in order to obtain a specific legal remedy which can be enforced against the other party to the action.

The most common remedies are as follows:

- **payment:** a court order to pay a sum of money such as a debt owed under a contract
- **damages:** an order to pay compensation for a loss suffered, for example, for negligently causing a personal injury or damaging property or not carrying out work as contracted
- **interdict:** an order stopping something, whether currently being done or planned, for example, carrying out an act which in law is classified as a legal nuisance, such as making excessive noise from residential premises
- **specific implement:** an order to do something that was agreed in a contract other than to pay money, for example, to keep premises open for business in accordance with a condition in a commercial lease
- **declarator:** a pronouncement that an individual or organisation has a specific legal right or duty, such as a 'declarator of parentage' which is a declarator that a particular man is the father of a child
- **statutory remedies:** remedies which are competent under particular statutes in particular cases, for example, an application can be made by a local authority for an Antisocial Behaviour Order (an 'ASBO') against a named individual under the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

THE SCOTTISH CIVIL COURTS AND TRIBUNALS

OVERVIEW

The sheriff courts are the local civil courts in Scotland, as there is a sheriff court in every city and a number of the towns. They have jurisdiction in respect of a wide range of civil (and criminal) matters. On the other hand, the Court of Session sits only in Parliament House in Edinburgh.

The structure of the civil courts in Scotland is relatively unusual in that, whilst the sheriff court and the Court of Session exist in a hierarchy in relation to each other, the jurisdiction of the Court of Session and the sheriff court significantly overlap at first instance. Many types of civil court action can be raised in either court according to the pursuer's choice. Sheriff courts and the Court of Session can also act as courts of first instance or as appeal courts, depending on the circumstances.

In 2011–2012 the sheriff courts heard 80,502 civil cases were initiated in the sheriff courts and 4,754 civil cases were initiated in the Court of Session according to the Scottish Government's [Civil Law Statistics in Scotland 2011–2012](#).

The sheriff courts and the Court of Session are considered in more detail below, along with the other courts and tribunals that form part of the civil court system in Scotland.

THE SHERIFF COURTS

Organisational structure

[Sheriff courts](#) are organised into six sheriffdoms based on the former local government regions.

Each sheriffdom (except Glasgow and Strathkelvin) is divided into sheriff court districts for administrative convenience, giving 46 sheriff court districts in all.² For the sheriffdoms and the sheriff court districts, see the helpful [map](#) provided by the [Scottish Court Service](#).

In April 2013, following a public [consultation](#) (Scottish Court Service 2012), the [Scottish Court Service](#) (2013) published its [report and recommendations](#) on 'Shaping Scotland's Court Service', which included the recommendation that ten sheriff courts should close (from the 49 sheriff court districts then in existence). The recommendations were accepted by the Scottish Government (2013a) and are currently being implemented.

Court personnel

The [sheriff](#) is the judge who hears cases at first instance. There are currently 142 sheriffs in post in Scotland.³ With some exceptions, sheriffs do not generally specialise in particular types of civil case (such as family cases or personal injury cases) or between civil and criminal cases.

Each sheriffdom also has a sheriff principal, whose duties include hearing appeals in civil cases from individual sheriffs and managing the sheriff courts in his or her sheriffdom. Each sheriff court also has a sheriff clerk, with responsibility for the day-to-day administration of the courts.

² This has been the case since November 2013. By the end of May 2014 it will reduce to 43 and by the end of January 2015 it will reduce to 39. See further the schedule to the Sheriff Court Districts Amendment Order 2013 (SSI 2013/152).

³ 140 sheriffs are acting in courts and two sheriffs are based at the Judicial Institute for Scotland (which provides training).

Some solicitors or advocates (i.e. the legal professionals representing bodies and individuals in court cases in Scotland) are also part-time sheriffs, although solicitors cannot do this in the sheriff court district where their main business as a solicitor is situated. The number of part-time sheriffs is currently limited to 80 at any one time (Sheriff Courts (Scotland) Act 1971, section 11A, as amended by Maximum Number of Part-Time Sheriffs (Scotland) Order (SSI 2006/257), art 2, and section 11B(9)).

In addition, section 14A of the Sheriff Courts (Scotland) Act 1971 (as amended by section 25 of the Judiciary and Courts (Scotland) Act 2008) confers a power on a sheriff principal to appoint a retired sheriff or sheriff principal to act as a sheriff as a temporary measure.

Types of procedure

There are three types of court procedure used in the sheriff court:

- **ordinary cause procedure:** this type of procedure is mainly used in cases relating to divorce or dissolution of a civil partnership, children, property and claims for recovery of debt or damages exceeding £5,000.
- **summary cause procedure:** this type of procedure is one which, if it relates to the payment of money, is used where the value of the claim is over £3,000 and up to (and including) £5,000. It is mainly used for disputes involving rent arrears, delivery of goods and debts.
- **small claims procedure:** this is an informal type of procedure used where the value of the claim is up to (and including) £3,000. It is used for resolving minor disputes (mainly relating to debts and consumer issues).

Specialisation

Under the [Ordinary Cause Rules](#) (OCR), the court rules applicable to the ordinary cause procedure, there are special rules applicable to certain types of court action. The main examples include commercial actions (OCR, chapter 40) and personal injuries actions (OCR, chapter 36), designed to allow the disposal of cases more quickly (and which are based on rules earlier introduced in the Court of Session). Another example is the special provision in the court rules for various types of family actions (OCR, chapters 33, 33a, 33AA and 33B).

In commercial actions there is a limited degree of specialisation amongst the judiciary, as commercial actions are dealt with by a nominated commercial sheriff (OCR, rule 40.2). However, the procedure for commercial actions is currently only available at seven sheriff courts.

In addition, Glasgow Sheriff Court and Edinburgh Sheriff Court, because they serve large population centres, provide the main examples of court business in particular geographical areas being of sufficient volume to be organised in such a way so that, in practice, sheriffs become specialists to some extent in other areas of legal practice. This applies to family actions (both courts), personal injuries actions (Edinburgh) and actions relating to adults with incapacity (Glasgow).

Who can represent the parties?

Solicitors, whose professional body is the [Law Society of Scotland](#), mainly represent parties in the sheriff court. However, advocates, or 'counsel' as they are sometimes referred to, whose

professional body is the [Faculty of Advocates](#), are also entitled to appear where instructed by a solicitor and indeed regularly do so (Macphail 2006, para 12.21).⁴

A party may also represent himself or herself in a case, whereupon he or she is referred to as a 'party litigant'. This is most common in the small claims action, where the procedure is designed for use by party litigants.

In April 2013, the sheriff court rules applicable to all three types of procedure in the sheriff court were amended, the overall effect of which is that a lay representative (i.e. a person who is not legally qualified) can make oral representations to the court on behalf of a party litigant where the sheriff considers it would assist his or her consideration of the case to permit this. The lay representative must not receive remuneration (direct or indirect) for carrying out this task (Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91)). Previously, lay representatives were only permitted under the small claims procedure, and, in a more limited way, under the summary cause procedure.

Appeals

In an ordinary cause action, appeal is either: a) to the sheriff principal, and then to the Inner House of the Court of Session (see further below); or b) from the sheriff directly to the Inner House of the Court of Session. Finally, an appeal can be made to the UK Supreme Court on a point of law only (as opposed to a question of fact) (Macphail 2006, para 18.99).

In summary cause actions, appeal is to the sheriff principal on a point of law only and then to the Inner House of the Court of Session on a point of law, if the sheriff certifies the cause as suitable for such an appeal, and then finally to the UK Supreme Court. In small claims, appeal is to the sheriff principal on a point of law only (Sheriff Courts Act 1971 (c 58), section 38; Court of Session Act (c 36), section 40; Macphail 2006, paras 31.333 and 32.137).

COURT OF SESSION

Jurisdiction

The Court of Session has jurisdiction over most civil matters in Scotland. Whilst it has extensive concurrent jurisdiction with the sheriff court, there is also a range of proceedings which continue to be competent only in the Court of Session (e.g. actions for judicial review). There are also some types of proceedings which are not competent in the Court of Session at first instance, for example, actions of a value not exceeding £5,000. (This rule containing a financial limit is referred to as 'the privative jurisdiction' of the sheriff court.)

Organisational structure

The [Court of Session](#) is divided into two parts – the Outer House and the Inner House. The Outer House is a court of first instance only, whereas the Inner House is primarily a court of appeal from the Outer House, the sheriff courts, certain tribunals and other bodies.

The Inner House consists of two divisions, the First and Second Divisions, of equal importance and jurisdiction. The First Division is presided over by the Lord President (the most senior judge and head of the judiciary) and the Second Division is presided over by the Lord Justice Clerk

⁴ However, the special position in relation to counsel's fees should be noted: the general rule in litigation is that the losing party is liable for the other side's legal expenses. However, where there is a 'taxation of accounts' on a 'party and party basis', i.e. when the accounts are submitted to an independent person to assess what legal expenses it is reasonable to find the losing party liable for, fees relating to the employment of counsel will only be included where a sheriff has previously sanctioned the employment of counsel in the case (Macphail 2006, paras 12.21, 19.32 and 19.43).

(the second most senior judge). If there is sufficient extra business to justify it (as there frequently is nowadays) another Division, called an Extra Division, can be established by the Lord President which includes judges who normally work in the Outer House.

Court personnel

[Senators of the College of Justice](#) are the judges who sit in the Court of Session (and the High Court of Justiciary, which deals with the most serious criminal cases). There are currently 34 Senators (including the Lord President and the Lord Justice Clerk).

The Lord President can appoint a retired judge of the Court of Session or the Supreme Court as a '[temporary judge](#)' in the Court of Session. (Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c 73), section 22). In addition, since 1990, provided they have had not less than five years continuous service in post, it has been possible to appoint a sheriff, a sheriff principal or a solicitor advocate as a temporary judge (Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c 40), section 35 and schedule 4). New [guidance](#) was recently issued relating to the scope of these judges' duties (Gill 2013). The maximum number of temporary judges is not limited by statute.

Jury trials

Sometimes in the Outer House, a judge will preside over a case which is heard by a jury of 12 (as opposed to a jury of 15 in a solemn criminal court). A jury can be involved in certain classes of case so long as they do not involve any particular legal complexity. Most jury trials are personal injury cases.

Specialisation

Again, as with the sheriff courts, there is a limited degree of specialisation in the Court of Session. There are special procedures for certain types of action, such as the [special procedure for commercial actions](#) (Court of Session Rules, [chapter 47](#)), heard before a nominated commercial judge (rule 47.2), as well as a special procedure for actions for damages arising from personal injuries (Court of Session Rules, [chapter 43](#)); both procedures being designed to allow such types of cases to be disposed of more quickly.

There are also specific court rules for dealing with other types of case, such as family actions (Court of Session Rules, [chapter 49](#)), applications for judicial review (Court of Session Rules, [chapter 58](#)) and actions relating to intellectual property (patents, copyright, trademarks etc.) (Court of Session Rules, [chapter 55](#)). The latter are also heard before nominated intellectual property judges (where such individuals are available) (rule 55.2).

There are also other examples of judges being nominated by the court rules to deal with other types of proceedings (where available) such as in insolvency proceedings (rule 74.2) and arbitration proceedings (rule 100.2).

Who can represent the parties?

Parties in a case before the Court of Session are mainly represented by advocates, who specialise in presenting arguments to the Court of Session. However, 'solicitor advocates', i.e. solicitors who have been granted special rights to appear in the Court of Session (and/or the High Court of Justiciary), may also represent the parties (Solicitors (Scotland) Act 1980 (c 46), section 25A).

Party litigants are also permitted and, as with the rules applicable to the sheriff courts, an amended version of the Court of Session rules (adding [chapter 12b](#)) came into force in 2013 which permits lay representatives to make oral representations to the Court on behalf of party

litigants, if the judge thinks it would assist the Court for this to happen. Again, lay representatives must not receive remuneration for carrying out this task (Act of Sederunt (Rules of the Court of Session Amendment No 3) (Miscellaneous) 2012 (SI 2012/89)). Under the previous version of the rules (dating from 2010 and adding [chapter 12a](#)) support for party litigants by lay representatives was possible but not representation.

Appeals

A party to a case determined in the Outer House always has the right to appeal to the Inner House (referred to as a 'reclaiming motion') (Court of Session Act 1988 (c 36), section 28). A decision of the Inner House can be appealed to the UK Supreme Court. The general rule (with some exceptions) is that such appeals come to the UK Supreme Court as of right, without the requirement for permission of the Inner House. However, the appeal must be certified by two counsel as "reasonable" before it can be heard in the UK Supreme Court (Court of Session Act 1988 (c 36), section 40, as amended by the Constitutional Reform Act 2005 (c 4)).⁵

TRIBUNALS AND COURTS OF SPECIAL JURISDICTION

Tribunals are specialised bodies which adjudicate on disputes or claims, often in relation to government decisions taken in a specific area of law and policy. In comparison to the courts, their processes and procedures are often relatively informal and they are generally less adversarial in their approach (there are, however, exceptions).

The tribunals system in Scotland is complex, with a wide variety of different tribunals, with diverse goals, structures and functions. As mentioned above, a large number of tribunals existing in Scotland deal with reserved issues and operate on a UK wide basis (e.g. [the employment tribunals](#) dealing with disputes about employment law rights). However, there are also tribunals in Scotland operating exclusively or primarily in relation to devolved matters, such as the [Lands Tribunal for Scotland](#) (created prior to devolution in 1999) and the [Additional Support Needs Tribunal for Scotland](#) (one of a number of tribunals covering devolved issues created since devolution).

At a UK level, there has been significant, recent reform of the tribunal system which has followed a three stage process: 1) the creation of a dedicated UK Tribunal Service to support UK tribunals; 2) the creation of a new structure for UK tribunals, including a First-tier Tribunal and an Upper Tribunal, into which most UK tribunal jurisdictions were transferred; and 3) the merger of the UK Tribunal Service with HM Courts Service to create [HM Courts & Tribunal Service](#).

In Scotland, reform is broadly following the same three stage process. To support the work of devolved tribunals, the [Scottish Tribunals Service](#) was created in 2010. Furthermore, the [Tribunals \(Scotland\) Bill](#), introduced in Parliament in May last year and which completed Stage 1 parliamentary consideration in November 2013, contains provisions which, if the Bill becomes an Act, will create a new structure for devolved tribunals (consisting of a First-Tier Tribunal and Upper Tribunal) (see further [Evans 2013](#)). In November 2013, the Scottish Government (2013b)

⁵ Also, as mentioned below, the Supreme Court is also the final decision maker in relation to civil appeals determining 'devolution issues', i.e. whether the Scottish Government or Scottish Parliament has acted outside their powers (Scotland Act 1998 (c 46), section 98 and schedule 6). In theory, to appeal to the Supreme Court in this regard requires leave of the court, either from the Inner House, or, failing such leave, from the Supreme Court itself. However, in practice, these leave provisions do not operate because of the general right of appeal in civil cases under section 40 of the Court of Session Act 1988 (c 36) which is typically used instead.

announced its intention to merge the [Scottish Tribunals Service](#) with the [Scottish Court Service](#) (see further below).⁶

As well as the tribunal system in Scotland, there are a number of courts of special jurisdiction, which have authority to hear and determine cases in particular types of claim only. Examples include the [Scottish Land Court](#), which deals with agricultural and crofting tenancies, and the Lands Valuation Appeal Court, which hears appeals on the rateable values of commercial property.

THE SUPREME COURT

The UK [Supreme Court](#) came into being in 2009, by virtue of the Constitutional Reform Act 2005 (c 4). It is not to be confused with ‘the Supreme Courts’ in Scotland, as the [Court of Session](#) and the [High Court of Justiciary](#) are sometimes collectively referred to.

As mentioned above, the UK Supreme Court is the final court of appeal in relation to civil cases in Scotland, assuming the former role of the House of Lords in this regard. It is also the final decision maker in relation to appeals determining ‘devolution issues’, i.e. whether the Scottish Government or Scottish Parliament has acted outside their powers, assuming the former role of the [Judicial Committee of the Privy Council](#) in this regard (Scotland Act 1998 (c 46), section 98 and schedule 6).

EUROPEAN COURT OF JUSTICE

The [European Court of Justice](#) (ECJ), which sits in Luxembourg, exists to ensure that European Community (EC) law is correctly interpreted and observed in member states. Under article 234 of the EC Treaty, a national court hearing a case involving the validity or interpretation of EC law can send that question (but not the rest of the dispute) to the ECJ for an authoritative ruling which binds that national court. The national court nevertheless decides all questions of fact and any questions of national law and gives the final judgement.

EUROPEAN COURT OF HUMAN RIGHTS

The ECJ is not to be confused with the [European Court of Human Rights](#). The latter court was created to ensure that a country which is party to the European Convention on Human Rights (ECHR), an international treaty, complies with its obligations under the ECHR. The European Court of Human Rights sits in Strasbourg.

The Human Rights Act 1998 (c 42), together with the provisions relating to human rights in the Scotland Act 1998 (c 46), gave an enhanced status in Scots law to the rights protected by the ECHR. Section 2 of the Human Rights Act requires that a Scottish court or tribunal, in determining a question which has arisen under that Act in connection with a right protected by the ECHR, “must take into account” the decisions and opinions of the Strasbourg court. So whilst the decisions of the Strasbourg court are not binding on Scottish courts and tribunals (unlike the decisions of the ECJ on EC law) they are likely to be highly influential by virtue of section 2. Furthermore, if the Scottish courts move too far from the case law of the Strasbourg Court, there is the possibility that the Strasbourg Court could find the United Kingdom in breach

⁶ In addition, the [Housing \(Scotland\) Bill](#) (sections 17–21), introduced in the Scottish Parliament in November 2013 and currently undergoing Stage 1 parliamentary consideration, contains provisions which will, if enacted, transfer the existing jurisdiction of the sheriff court in relation to private rented housing (but not social housing) to the proposed First-Tier Tribunal (see further [Berry, Evans and Harvie-Clark 2013](#), pp 28–31).

of the ECHR if an individual takes a case against the United Kingdom to the latter court because he or she feels he or she has been denied a remedy under the ECHR (Ewing and Dale-Risk 2004, p 81).

OTHER RELEVANT BODIES AND INDIVIDUALS

THE LORD PRESIDENT

The [Lord President](#) is the most senior judge in Scotland and the Head of the Scottish Judiciary, with overall responsibility for making and maintaining arrangements for the efficient disposal of the business of all the courts in Scotland (Judiciary and Courts (Scotland) Act 2008 (asp 6)('the 2008 Act'), section 2). He has statutory responsibilities in relation to areas including judicial conduct, training, welfare and deployment.

THE FIRST MINISTER

The First Minister has a number of specific duties in relation to the courts including some relating to judicial appointments and judicial conduct. However, judges are not subject to ministerial control as the independence of the courts has always been regarded as an important constitutional principle, enshrined in legislation for the first time by section 1 of the 2008 Act.

THE SCOTTISH COURT SERVICE

Many operational functions associated with the day-to-day administration of the courts and the judiciary are carried out by the [Scottish Court Service](#) (SCS). This body, which has been in existence since 1995, was formerly an executive agency of the Scottish Government. However, since 2010 it has been an independent body corporate (2008 Act, section 60). The [Scottish Court Service Board](#) is chaired by the Lord President.

Section 120 and schedule 3 of the [Courts Reform \(Scotland\) Bill](#) (SP Bill 46) makes provision for the SCS to merge with the [Scottish Tribunal Service](#). The intention is that the new body will retain a similar structure to the SCS and also be independent of government (Scottish Government 2013).

THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

The [Judicial Appointments Board for Scotland](#) has an important role in the judicial appointments process, by providing the First Minister with a list of candidates recommended for appointment for various judicial offices, including the office of the Court of Session judge, sheriff or sheriff principal. However, the appointment of the Lord President and the Lord Justice Clerk is subject to a separate process which does not involve recommendation of candidates by the Board.

The Board has existed since 2001 and has been a statutory body since 2009 (2008 Act, sections 9–18 and schedule 1). Prior to its creation the appointment procedures for judges lacked transparency and the Lord Advocate (the chief Scottish law officer and a member of the Scottish Government) played an important role.

SCOTTISH CIVIL JUSTICE COUNCIL

The [Scottish Civil Justice Council](#) is a statutory body which came into being on 28 May 2013 (Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), sections 1–16).

Its creation implemented a recommendation⁷ of the [Civil Courts Review](#) and it replaced two separate bodies – the Court of Session Rules Council and the Sheriff Court Rules Council.

The new body has responsibility for preparing and submitting to the Court of Session draft rules of court associated with the Court of Session and the sheriff courts, as well as more general responsibilities including to keep the civil justice system under review (and to make recommendations to the Lord President in this regard).

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⁷ Recommendation 206.

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SB 11/59 [The Scottish Criminal Justice System: the Criminal Courts](#)

SB 14/02 [Housing \(Scotland\) Bill](#) (pages 28–31)

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