

Equalities, Human Rights and Civil Justice Committee

Thursday 3 September 2026

2nd Meeting, 2026 (Session 7)

Civil Justice roundtable

Overview

1. At its meeting on 25 June the Committee agreed to start the autumn term by holding three separate roundtable evidence sessions covering the three parts of its remit.
2. The intention of these sessions is to help provide members with an overview of key issues for stakeholders and to help inform discussions around future work programme priorities.
3. The purpose of this paper is to provide information to inform the first of these discussions which will cover civil justice.
4. At this meeting the Committee will take evidence from:
 - Rachael Kelsey, Solicitor, SKO Family Law Specialists
 - Colin Lancaster, Chief Executive, Scottish Legal Aid Board
 - Paul McKinlay, Executive Director of Court Operations, Scottish Courts and Tribunals Service
 - Jennifer Paton, Head of Policy, Law Society of Scotland
 - Paul Reid KC, Faculty of Advocates
 - Kyle Scott, Policy Manager, Citizens Advice Scotland
 - Jamie Speirs, Principal Solicitor, Scottish Child Law Centre.
5. Further information on key themes expected to arise in the discussion can be found in the SPICe briefing which is attached as an annexe.

Next steps

6. At its next meeting on 10 September the Committee will hold a roundtable discussion covering the equalities part of its remit. This will be followed by a session on human rights on 17 September.
7. The Committee will then have the opportunity to explore issues raised in all three evidence sessions with the Minister Equalities and the Minister for Victims and Community Safety at its meeting on 24 September.

Conclusion

8. The Committee is invited to consider the information provided in this paper in its roundtable discussion on matters arising under the civil justice part of its remit.

Clerks to the Committee
August 2026

Annexe



Civil Justice roundtable

Purpose of this paper

The purpose of this paper is to highlight key civil justice issues which members may wish to raise with stakeholders attending the roundtable event. It builds on the overview paper produced for the Committee's first meeting in June.

Key issues

Legal aid

Policy context

Legal aid provides support towards the costs of advice and representation from a solicitor for those who would not otherwise be able to afford it. It is key to the functioning of the criminal justice system and an important contributor to access to justice for civil legal issues.

An independent review made recommendations for reform to the Scottish Government in 2018, and Session 6's Equalities, Human Rights and Civil Justice Committee [carried out an inquiry](#) which highlighted concerns about legal aid "deserts". Legislation delivering reform is expected in 2026/27.

More information about the reform agenda is available from SPICe's key issues briefing: [Legal aid – how close is meaningful reform?](#)

Reforms in progress

At the end of the last Session of the Scottish Parliament, the Scottish Government laid regulations which would make significant changes to the current legal aid system. The main changes are:

- **increasing the role of Criminal Legal Aid as the main form of legal aid for people appearing in the criminal courts** – Criminal Legal Aid has more generous financial eligibility criteria than Assistance By Way of Representation (ABWOR), the type of legal aid it is replacing. The changes are due to come into force in December 2026
- **increasing the circumstances where children in the Children's Hearing system can access legal aid without any financial or other criteria** – the changes came into force in June 2026
- **increasing fees paid to solicitors for legal aid work** – an across the board increase of 13% is due to come into force in September 2026.

Scottish Government consultation

The Scottish Government published a [consultation on legal aid reform](#) on 21 July. Proposals are at a fairly high level, but it indicates the Scottish Government's general approach. The intention is "to establish a legislative framework for a simpler, more flexible and effective legal aid system".

The SNP's manifesto contained a commitment to bring forward legislation on legal aid reform within the first year of government. This means legislation is expected by June 2027. Key proposals are discussed below.

More "planned" legal aid projects

The current legal aid system is called "judicare" – where solicitors in private practice are paid on a case-by-case basis. The consultation describes this as continuing to be at the core of legal aid provision. However, it proposes also using a combination of grant funding, contracting and directly employed solicitors to better meet identified legal need. There is no indication of the proportions of each type of funding expected in a reformed system.

The intention is that the types of projects needed to meet legal aid gaps will be informed by consultation with legal aid users and other stakeholders.

Simplifying the structure of legal aid

There are currently a number of different types of legal aid, each with its own eligibility criteria. Advice and Assistance (including ABWOR) has relatively restrictive financial eligibility requirements whereas Civil and Criminal Legal Aid are more generous. The Session 6 Equalities, Human Rights and Civil Justice Committee [called for](#) financial eligibility for Advice and Assistance to be expanded to match that of Civil Legal Aid (see page 17).

Reform proposals include streamlining the different types of legal aid and simplifying administrative processes for releasing payments to solicitors. Changes are also proposed to the way financial contributions to ongoing legal costs are assessed, as well as the "clawback" system. "Clawback" allows the Scottish Legal Aid Board to recover its costs from any property "preserved or recovered" as a result of legal action (such as a compensation award).

The consultation states that, in order to support long term affordability, there will be no additional circumstances where legal aid is available without means testing. Note that the Session 6 Equalities Committee [called for](#) legal aid to be available without financial eligibility criteria for those seeking civil protection orders to protect them from abusive partners and for homelessness cases resulting from breach of a statutory duty (see page 17). This is where a local authority fails to meet its statutory obligations to a homeless person.

Legal aid for organisations

Currently, legal aid is only available to individuals (including people appearing in a representative capacity in some circumstances). Some stakeholders have argued that this is a barrier to access to justice because there are situations where

organisations are better placed to take legal action. Examples could include environmental organisations or rights bodies taking action on behalf of affected people.

The consultation asks for views on whether legal aid eligibility should be broadened to certain organisations to allow them to protect rights, fulfil statutory functions or participate effectively in legal proceedings.

Family law

Between December 2025 and April 2026, the Scottish Government [consulted](#) on family law reform in three areas:

1. Raising the minimum age for marriage or civil partnership from 16 to 18, following equivalent [changes](#) made in England and Wales in 2022.
2. Reforming how a couple's property and finances are handled when cohabiting relationships end, following a [2022 report](#) by the [Scottish Law Commission](#) recommending changes.
3. Extending the simplified 'do-it-yourself' divorce or civil partnership dissolution [procedure](#) to couples with children under 16; currently, this procedure is limited to childless couples who agree on their post-separation finances.

Neither individual responses, nor an analysis of consultation responses, have yet been published by the Scottish Government. The [SNP 2026 manifesto](#) committed to legislation on points 2 (cohabitants' rights) and 3 (simplified divorce/dissolution).

On point 3, relating to the simplified divorce/dissolution procedure, [the Scottish Government is anticipating legal aid savings from its proposal](#). However, Scottish Women's Aid, for example, is [concerned](#) about the impact of the simplified procedure on families affected by domestic abuse (p 14).

For further background on the existing law, see the 2024 SPICe briefing, [The law applying at the end of adult relationships](#).

Separate from current law reform proposals, several important pieces of legislation from Session 5 of the Scottish Parliament remain wholly or partly unimplemented. This is an issue the former Equalities, Human Rights and Civil Justice Committee [examined](#) in Session 6.

In family law, these include key parts of the [Children \(Scotland\) Act 2020](#), which aims to reform the law and court processes for disputes over children following parental separation. For example, the 2020 Act contained provisions to enable better regulation of child welfare reporters, who play a significant role in family cases by [writing reports for the courts](#) on a child's views and what is in their best interests. Despite a [consultation](#) on the necessary regulations in 2021, they have yet to be made.

Separately, the Committee may, at some point, hear arguments for reforms that go beyond the changes introduced by the 2020 Act. A key challenge for policymakers in this context is designing laws and processes that work across a wide range of family

circumstances, from cases where both parents' involvement wholly benefits the child to those where a parent poses a serious risk to the child and/or the other parent. The legal framework applied must be robust enough to support both situations.

The 2024 SPICe briefing, [Parental responsibilities and rights](#), provides more information on the existing law and the changes intended via the 2020 Act.

Another important example of unimplemented legislation is Part 1 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), which – once commenced – will introduce new short-term emergency civil measures to remove a perpetrator from the family home or prevent their return.

Part 1 of the 2021 Act has not yet been commenced [following practical implementation difficulties](#). The Scottish Government has [confirmed](#) that legislative changes will now be required to Part 1, but the timings otherwise remain unknown.

Separately, note that the [Scottish Law Commission](#), the independent statutory law reform body, is currently [reviewing](#) civil law remedies for domestic abuse aimed at longer term protection of vulnerable individuals and their families. A final report with recommendations for the Scottish Government is expected to be published in 2027.

[A SPICe briefing on the civil law on domestic abuse](#) provides further detail on these and related issues.

Digital and AI strategy

In the past, civil justice processes were paper based, in-person ones. In recent years there have been moves to digitise some of these processes. For example, the Scottish Courts and Tribunals Service (SCTS) has introduced “[Civil Online](#)”, an online digital portal for certain court procedures (see its [Digital Strategy 2018-2023](#)). The SCTS is now developing a new [digital strategy](#) including a proposed approach to AI. Some of the bigger policy questions in this area include whether new technologies are being introduced quickly enough, but also whether new procedures are sufficiently robust, transparent and focused on the needs of users.

Judicial independence and the rule of law

One of the key elements of [the principle of the rule of law](#) is that the judiciary decides cases independently of outside pressures in accordance with the law.

Judicial independence has been an issue of debate recently. Last session, the Scottish Government was forced to remove Ministerial powers in the Regulation of Legal Services (Scotland) Bill due to concerns that these would threaten judicial independence (see [SPICe blog](#)). The President of the Supreme Court, Lord Reed, has also highlighted the issue in a recent [speech](#) noting that although “populism responds to real problems [it] can undermine the rule of law by ... undermining support for judicial independence”. [The Scottish Government's proposed Human Rights Bill](#) is likely to lead to further questions as to the role of the judiciary in the constitution as it could give individuals the power to bring court actions against public bodies when UN economic, social and cultural rights are breached.

The costs of litigation

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

There can be significant costs and risks attached to taking court action. This is an important strategic factor in how the justice system works and can act as a barrier to access to justice.

The Civil Litigation Act made a number of changes designed to reduce the costs and risks of court action, with the intention of supporting access to justice. The main changes introduced were:

- **damages-based agreements** – allowing solicitors to take a share of a pursuer's compensation award when operating on a no win, no fee basis. This is intended to increase the types of cases which could be funded in this way. There are statutory caps on the percentage which can be claimed for certain cases
- **qualified, one-way costs shifting** (QOCS – pronounced KWOKS) – this allows the pursuer to claim their legal expenses for taking court action from the defender if they win, but not for the defender to claim their legal expenses from the pursuer if they win. QOCS is used in situations where there is a perceived asymmetric power dynamic between the parties to court action. It is available for personal injury claims in Scotland, where the pursuer is usually an individual and the defender is usually an insurance company
- **group proceedings** (sometimes called “class actions”) – a form of court action which allows many people with similar claims to join one court action. This shares the costs and risks involved. Currently group proceedings are available on an “opt-in” basis. This means participants have to actually choose to join in with legal action. There is also a power to make rules for “opt-out” proceedings, where a class of pursuer is deemed to be covered by the legal proceedings, unless they actively opt out.

Review requirements

These reforms were controversial at the time they were enacted, with some stakeholders expressing concerns about unintended consequences. As a result, review requirements were built into the legislation. The 2018 Act requires the Scottish Government to review the impact of damages-based agreements, QOCS and some other reforms and, separately, the impact of group proceedings. Both reviews are now overdue.

Group proceedings

As noted above, the 2018 Act enables rules to be made for group proceedings on an opt-in or opt-out basis. Opt-in group proceedings have been available since 2020. The Scottish Courts and Tribunals Service website has a [list of the cases which have been taken forward on this basis](#).

Opt-out group proceedings are not currently available, although the Scottish Civil Justice Council [consulted](#) recently on developing rules in this area. Supporters of opt-out proceedings see it as a way of increasing access to justice for issues where the individual impact is small but the cumulative effect is not – such as some consumer and environmental compensation claims¹. However, detractors raise concerns that this type of action opens the doors to speculative claims which benefit lawyers or claims management companies rather than individuals.

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Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

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¹ Classic examples of where opt-out group proceedings are argued to help are things like price fixing for football strips or generalised pollution claims. In these types of cases, the level of damages which can be claimed by one person is too low to make it worth taking legal action, but the overall impact can be significant.