

Modern Laws for a Modern Scotland
A Report on Civil Justice in Scotland



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SCOTTISH EXECUTIVE

Modern Laws for a Modern Scotland

A Report on Civil Justice in Scotland

February 2007



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foreword by the minister for justice

Justice is at the heart of a peaceful, prosperous society. For most of us, most of the time, the legal framework that surrounds us and supports our daily lives is something that we take for granted. But the law and the legal system provide the framework of rights, responsibilities and rules that help individuals, families, communities and businesses live and work together in harmony.

The civil law underpins virtually every aspect of our daily lives – in our personal relationships within families, as neighbours and members of communities, in our work whether as employees or running a business, and at home or in our leisure time as shoppers and consumers.

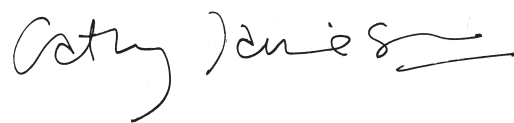
We need modern laws for a modern Scotland. Our laws must be suitable for the way we live now. They must be clear, fair and understandable. They must provide accessible ways to sort out problems, protect rights and resolve disputes if things go wrong.

Since devolution, we have reviewed and updated many aspects of our civil law and civil justice system. This includes a major modernisation programme in property law, new legal arrangements for the enforcement of legal obligations and to help debtors, new laws benefiting adults with incapacity and significant changes in family law. The Executive will continue to bring forward reforms in the civil law where required. But we now believe the time is right to concentrate on reviewing and modernising the delivery of civil justice in Scotland.

We have agreed with Scotland's senior judiciary that a major review of the civil courts is needed, to ensure that their structure, procedures and working methods promote access to justice and early, proportionate resolution of disputes, as well as making the best use of resources. I am delighted that the Lord Justice Clerk, the Rt Hon Lord Gill, has agreed to lead that review. Alongside the work of his team, we recognise that there is work to be done to improve access to legal information, advice, and representation where necessary, and to raise awareness of mediation and other forms of dispute resolution.

This document sets out our vision for civil law and civil justice in 21st century Scotland. It describes the principles by which we believe civil justice should operate, mindful of the need to provide value for money and deliver services as efficiently as possible. It also identifies areas where we believe change and improvement are needed.

We believe that out-dated ideas and vested interests should be challenged and new ideas and innovations which will better serve the public encouraged. Everyone who has an interest in the delivery of civil justice services needs to work in partnership to find the right solutions to the problems we have identified. There is a particular need to work with members of the public, to listen to their concerns and hear their views about what changes are needed. We are confident that by working together we will improve our civil justice system for the benefit of all.



Cathy Jamieson, MSP
Minister for Justice

Civil law is the law that regulates the rights and responsibilities of individuals or legal persons between one another and which governs the rights and responsibilities of government and the state. It includes **private law** areas such as family law, contract, reparation, inheritance and property law, and **public or administrative law** areas like education, health, planning, immigration, social security, and tax. The Scottish Parliament can legislate in most areas of Scottish private law, but much public law is reserved to the Westminster Parliament. The Scottish courts deal with cases in all areas of both Scottish and UK law.

Civil justice means the services and mechanisms that:

- provide information and advice about civil law;
- help to resolve problems and disputes about civil law matters; and
- enforce and protect civil law rights and responsibilities when necessary.

Services cover a broad spectrum, from general advice providers such as Citizens Advice Bureaux, through specialist advisers on particular issues such as welfare benefits or immigration, to a variety of professions and disciplines including lawyers, arbiters, and mediators.

Mechanisms for resolving disputes range from negotiation-based processes such as mediation and conciliation, through more formal processes involving third-party decision-makers, such as arbitration or adjudication, to formal judicial processes in the civil courts and tribunals.

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This report aims to set out the Executive's vision for civil law and civil justice in Scotland in the 21st century.

OVERVIEW

- 1.1 The civil law and civil justice exist to support and regulate an enormous variety of types of human behaviour and relationships. Individual citizens, families, businesses, public bodies and government institutions are all affected by the civil law in the way they go about their daily lives or carry on their lawful activities. Within and between each of these groups, there is a huge range of different types of relationship or dispute that could arise, all needing the civil justice system to deliver an appropriate way of sorting out the problem or, if it cannot be resolved by agreement, determining and enforcing legal rights and responsibilities.
- 1.3 We want everyone to have an understanding of the importance of the civil law in their daily lives, to have access to the advice and support they need to make the right choices about the legal matters that affect them, and to be confident that our civil justice services will help them to sort out problems when they arise. We also want to make sure that we make the best possible use of the resources available, to provide services that people will value and trust, and that deliver outcomes which actually resolve problems, helping people get on with their lives and supporting business and enterprise. That means thinking very carefully about the different ways in which we apply the money we spend on providing information, advice and assistance, the way we use our court buildings and other facilities, and the way we use the time and expertise of our judges and court staff.

OUR ASPIRATIONS

- 1.2 We hope this report will allow the reader to see the "big picture" for civil law and civil justice in Scotland; as the paragraph above shows, this is a large canvas, and it is not always easy to see how the various parts of the picture relate to one another. Focussing on the detail of one part can mean that we lose sight of the overall effect. The report shows how the great variety of projects that we are currently engaged on fit together into a coherent whole. Above all, it aims to help the people of Scotland to have a clear picture of our objectives and the principles which we believe should apply to decisions about future reforms.
- 1.4 We are clear about these aspirations. It is also clear that there is still much to be done to realise them fully. This document puts in context the work that has already been done and sets out the broad direction which we believe should be followed. The general principles set out in Chapter 3 are intended to provide the policy framework within which we see the review of the civil courts operating, as well as a framework for other future reforms in civil justice.

BROADER CONTEXT

1.5 This paper is not intended as a consultation document, but we hope it will raise public awareness of the importance of civil justice and will be very happy if it stimulates discussion. We hope that this will be the start of a broad-ranging public debate, which may well stretch over a number of years, about what is wanted from our civil justice system and how best to achieve it. While this paper sets out what we currently see as the direction of travel, we recognise that it is for the new Administration to be elected in May to take forward this work, consistent with its own priorities. Any Administration must always be open to new ideas and willing to re-assess and re-focus its priorities to respond to events and changes in circumstances.

1.6 This report provides:

- In Chapter 2, a description of the reforms in civil law that the Executive has achieved since devolution and an indication of possible future areas of reform;
- In Chapter 3, a discussion of key issues involved in the delivery of civil justice services and an explanation of the policy principles that we consider should underpin future civil justice reform, as well as our response to the report by the Scottish Consumer Council's Civil Justice Advisory Group;¹ and
- In Chapters 4 and 5, a description of civil justice reform work achieved, currently in progress or already announced.

1.7 The paper concentrates on initiatives affecting the justice system. It is, however, important to bear in mind the broader context in which these initiatives take place. Justice system projects have close links with policies on:

- care, protection and education of children, and on adoption and fostering and family relationship support;
- anti-social behaviour, social inclusion, housing and planning law;
- protecting the environment and promoting environmental justice;
- resolution of disputes regarding the provision of health services; and
- promoting enterprise and regulating the way businesses operate.

1.8 Aspects of civil law and civil justice reform are also high on the agenda of the UK Government. Many of the UK Government's initiatives, while primarily affecting areas of law reserved to the UK Parliament, have implications for civil justice systems in Scotland. They may require new court procedures to be put in place, or they may involve setting up new advice and information services, or the creation of a new tribunal that may have to make determinations involving Scots law. Reforms to areas of law such as consumer credit, which is reserved, may have an impact on the types and numbers of debt cases

¹ Scottish Consumer Council The Civil Justice System in Scotland – A case for review? November 2005
http://www.scotconsumer.org.uk/accessjustice/documents/rp11civil_000.pdf

coming to court; and changes in immigration law may affect the numbers of judicial review cases being dealt with by the Court of Session. Developments such as these have to be factored in when we are considering possible changes to civil justice services in Scotland.

1.9 Similarly at EU level, there are changes in the pipeline which will have a significant impact on civil justice in Scotland. In an increasingly global society, it is important that disputes can be effectively resolved across international borders and EU initiatives such as those relating to small claims, enforcement, and mediation will affect the way our courts and other civil justice service providers operate.

1.10 All this means that justice policy can never be developed in isolation. We need real consultation and engagement with the huge and diverse range of stakeholders who have an interest in the way the justice system operates. All the policies described in this document have resulted from such consultation and discussion, often facilitated by the new legislative procedures that our own Parliament has brought. Work needs to continue to ensure that the public and everyone who is interested in the delivery of justice are fully involved in the policy development process.

1.11 Policy development must also be informed by research and analysis and there is currently a wide programme of research in civil law and civil justice, including: the family, children and relationships (including a large programme of work on child contact); adults with incapacity; information, advice and representation; and alternative dispute resolution and methods of delivering civil justice. Planned research involves projects to monitor and evaluate the effectiveness of new and existing policies, including the new Family Law Act and new legislation on bankruptcy and diligence. Other research will contribute to the formulation of policies by, for example, exploring initiatives such as in-court advice pilots and mediation pilots. A key task for the civil courts review will be to explore ways in which outcomes in civil justice can be measured.

Modern laws for a modern Scotland means fair laws and systems that deliver:

- clear rights and responsibilities for all Scotland's citizens; and
- access to justice, by means of
 - information, advice and support to help people avoid problems in the first place, and to get the right advice and help if they do have a problem;
 - accessible ways of helping people sort out problems when they arise, short of going to a court or a tribunal; and
 - streamlined procedures for determining, protecting and enforcing rights for those cases that need to go to a court or tribunal.

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The civil law affects virtually every aspect of our daily lives as we raise our families, earn our living, look after our property, protect our environment and community, and settle our disputes.

2.1 The Scottish Parliament can legislate on very many areas of civil law, stretching from family law, property law and inheritance to public safety, economic development, education and health. One of the major benefits of the Scottish Parliament is the opportunity it provides to keep Scots law – the distinctive body of law applying in Scotland – up to date and in good repair. A core function of the law is to regulate relationships, whether these arise in a personal, community or business context: to do this effectively it must evolve as our society evolves and as our values develop.

2.2 The law is a powerful instrument for advancing public policy. It is not the only, or always the best, instrument but it can be a potent force for change, establishing new rights or duties and helping to modify expectations and attitudes. During the present session of Parliament, we have

chosen to give a strong focus to reform of various aspects of family law where the law needed updating to reflect the way we live now and to provide fair remedies, and protection for the vulnerable, when things go wrong. There are solid achievements in that field including the creation of a new legal status for civil partners; a package of important changes to the law on marriage, divorce, and the rights of cohabitants; and child protection measures. These law reforms provide essential underpinning for our social policy objectives to promote stable families and in particular to give children the best start in life.

2.3 Of course, we have done much more than reform family law, as the following paragraphs set out. Across all our civil law reform efforts, the Executive has a number of key aims:

Civil law reform – key aims

- to keep the law up to date and relevant to the way we live now;
- to give priority to measures which protect the vulnerable in our society; and
- to harness the power of the law to our social and economic agenda.

WHAT WE HAVE DONE

- 2.4 Since devolution, we have reformed the civil law in several significant areas.
- 2.5 The **Adults with Incapacity (Scotland) Act 2000** introduced new ways to manage the financial affairs and safeguard the welfare of people who are unable to make some or all decisions for themselves. It helps people plan for their own future in case they are ever unable to manage their own affairs, and it provides a number of ways in which carers and others can manage the affairs of someone who is not able to do so personally.
- 2.6 We have undertaken a co-ordinated programme of property law reform, based on proposals by the Scottish Law Commission. The **Abolition of Feudal Tenure etc. (Scotland) Act 2000** abolished the feudal system of land tenure in Scotland and replaced it with a system of outright ownership of land. The **Title Conditions (Scotland) Act 2003** modernised and clarified the law on real burdens and set out a framework of rules for the imposition of conditions in the system of outright ownership of land, complementing feudal abolition. The **Tenements (Scotland) Act 2004** completed the programme by reforming the law of the tenement.
- 2.7 Two pieces of legislation passed by the Westminster Parliament but which were supported by the Executive and the Scottish Parliament recognised changes in public attitudes towards gay and lesbian couples and transsexual people. The **Civil Partnership Act 2004** creates a new form of legal relationship for same-sex couples who wish their commitment to one another to be recognised in law. The **Gender Recognition Act 2004** introduced a mechanism whereby transsexual people have the opportunity to seek legal recognition in their acquired gender.
- 2.8 The **Family Law (Scotland) Act 2006** modernises several aspects of family law; the legislative changes, combined with the information initiatives outlined in Chapter 4, reinforce the fundamental principle that children's welfare has to be at the heart of family law.

WHAT WE ARE DOING

- 2.9 Recognition of the rights set out in the European Convention on Human Rights now underpins the whole of our legal system. The **Scottish Commission for Human Rights Act 2006** provides for the creation of a body with primarily an education and awareness-raising role, working to dispel ignorance and misunderstanding about the substance of human rights law and how it affects people's daily lives. The new Commission will be accountable to the Scottish Parliament and we will work with the Parliament and other relevant interests to help set it up.

- 2.10 The **Adults with Incapacity (Scotland) Act 2000** has already achieved a great deal in terms of facilitating and improving the management of the personal and financial affairs of people with some degree of incapacity, while ensuring that they retain as much autonomy as they can. No piece of legislation is perfect, however, and experience since the Act was passed has shown that there are some provisions in it that would benefit from being looked at again. The legislation to take forward some of the recommendations of the Scottish Law Commission’s report on Vulnerable Adults – the **Adult Support and Protection (Scotland) Bill** – gives us the opportunity to make the changes needed. The fact that we are able to do this within a short time of identifying the need for changes demonstrates once again the benefit of Scotland having its own Parliament.
- 2.11 The law dealing with insolvency is being revised to improve the procedures relating to bankruptcy and diligence, and the legislation will also enable reform of **protected trust deeds**. These allow a person who is insolvent to voluntarily hand over his or her assets to an independent professional person to manage for the benefit of creditors, without a full sequestration. Our aim is to make the system more transparent and ensure that there is a reasonable balance between the benefits the procedure offers to debtors and the return that it makes available to creditors.
- 2.12 In September 2006 we introduced in the Scottish Parliament the **Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill** to address certain issues around claims for non-financial damages by the families of victims of mesothelioma. We have also used the **Compensation Act 2006**, following a Legislative Consent Motion in the Scottish Parliament, to reverse for Scotland the House of Lords judgment in the Barker² case. Alongside this, and to help inform future policy, we have asked the Scottish Law Commission to examine in detail the current law relating to damages recoverable in respect of deaths caused by personal injury and damages recoverable by relatives of an injured person.
- 2.13 We are working with the UK Government on reforms to company law and floating charges, as they affect Scots law, so that the benefits to business in the **Companies Act 2006** and the **Bankruptcy and Diligence etc. (Scotland) Act 2007** will be available to businesses operating in Scotland.
- 2.14 We are also involved in a number of current European initiatives. These include projects to resolve conflicts between different legal systems in international civil cases, for example the Rome II project which seeks to establish rules, and greater legal certainty, on how cross-border disputes involving non-contractual obligations are resolved. It is important that we continue to contribute to these to ensure that the outcomes work effectively in relation to Scots law, and help people and businesses in Scotland take advantage of opportunities to travel, work and do business in the international dimension.
- ² Barker v. Corus (UK) plc and others [2006] UKHL 20, 3 May 2006

WHAT WE WILL DO

- 2.15 The majority of the recent reforms we have made in civil law have been based on reports and recommendations made by the **Scottish Law Commission**, and it is likely that this will also be the case in the future. The Commission's 7th programme of law reform, aimed at keeping the law in good repair, commenced on 1 January 2005 and covers both criminal and civil projects. On the civil side, it builds on the recent reforms to property law, looking now at **land registration**. It is undertaking a comprehensive review of **trust law**, and examining the law relating to **judicial factors**. New projects in the current programme include a review of the **law of succession (inheritance)**; an examination of the law relating to **assignment of and security over intangible assets**, such as insurance policies, or book debts, which will have important implications for Scottish businesses; and a look at the **law affecting unincorporated associations**, such as sports clubs and residents' associations. It also includes some specific items which have been prompted by requests for advice from the Executive itself, such as the current reviews of the law on relatives' claims for damages (as mentioned above). It has published its reports on the law about **interest on debt and damages, leasehold tenure** and of the **law of limitation of actions as it affects personal injury cases**.
- 2.16 The Executive itself will also be undertaking a variety of research and evaluation projects in areas of civil law, some of which may indicate areas which need further review and reform. Planned work includes monitoring and evaluation of recent legislation, such as the changes introduced by the Family Law (Scotland) Act 2006.
- 2.17 Priorities for further civil law reform will be informed by the reports the Commission makes, by the Executive's own research, and by its assessment of what changes would bring about the most benefit to the people of Scotland. We are completing the legislative programme for the remainder of the current session of the Scottish Parliament, and the decision on priorities following the election is of course one for the incoming Administration. Some of the items mentioned above are, however, likely to result in future consultation and legislative proposals. It is vital in developing our future law reform agenda that we attend to the problems that people experience in their daily lives; and we will work hard, in concert with the Parliament, to secure early solutions to these.

Some projects of the Scottish Law Commission in their current programme of work

- **Leasehold tenure** – the Commission published its report on 21 December 2006 on updating the law on long leases taking account of feudal reform. That represents the last piece of the jigsaw in abolishing the feudal system of land tenure in Scotland.
- **Succession** – the Commission is taking a comprehensive look at the law on who inherits someone’s property when they die, to bring it up to date with current social attitudes and new family structures.



3

This Chapter outlines the broad policy principles that we believe should underpin civil justice reform and explains the background to our decision to embark on a major review of our civil courts.

3.1 As Chapter 1 explained, civil justice covers a range of services, mechanisms and institutions. They share a common aim to provide people, businesses and public bodies with ways to resolve legal problems and to sort out legal disputes in a fair and just way, and taken together, they can be said to form the civil justice “system”.

3.2 Since devolution, the Executive has driven forward a radical programme of reform to the criminal justice system, which has to some extent meant that reforms to civil justice, while still continuing, have had a lower profile. Over the last few years, however, the Executive has become increasingly convinced of the need to direct more attention at the civil side of the justice system. This has been driven by a number of factors. A growing awareness of public dissatisfaction with aspects of civil justice, as brought out in research,³ the emergence of interest in mediation and other new methods of dispute resolution,⁴ and the clear success of new procedures in some parts of the court system⁵, showing the benefits of new ways of working, have all suggested that there are opportunities to improve the delivery of civil justice for the people of Scotland.

PRINCIPLES OF REFORM

3.3 We need to be clear about the principles which will underpin future reform. There are two key principles that we believe should inform all proposals for change in civil justice: **proportionality** and **value for money**.

PROPORTIONALITY

3.4 Like any system, the civil justice system has to balance a number of different demands upon its processes and resources. The civil justice system deals with problems and disputes which concern civil legal rights or responsibilities; typically there will be doubt or disagreement as to which of a number of competing legal rights and interests should, in law, prevail. The challenge for the civil justice system is to provide mechanisms which will enable problems or disputes to reach outcomes which are correct in law, which strike the appropriate balance between competing legal rights, or which, if they involve a compromise of legal rights, do so with the informed agreement of the party or parties involved. It also has to try to provide such outcomes within a reasonable time, and at a reasonable cost to the parties involved and to the public purse.

³ Hazel Genn & Alan Paterson *Paths to Justice Scotland: what people in Scotland do and think about going to law* Hart Publishing, 2001; Scottish Executive *Improving Family law in Scotland: Analysis of written consultation responses* October 2004 <http://www.scotland.gov.uk/Publications/2004/10/20057/44653>

⁴ The establishment of the Scottish Mediation Network's office in 2002 has provided a focus for mediators and the Network is helping to bring mediation into the public consciousness as an option for dealing with disputes. <http://www.scottishmediation.org.uk>

⁵ See, for example, the research into the operation of the Commercial Court procedure in Glasgow Sheriff Court, by Elaine Samuel, Scottish Executive Social Research 2005 <http://www.scotland.gov.uk/Publications/2005/10/28163103/31038>

- 3.5 What is reasonable in terms of time and cost will vary according to the circumstances of the case. The test is proportionality – whether the level of legal and, where appropriate, judicial resource applied to an issue is proportionate to the importance and value of the issue to the parties and to society in general. In a child abduction case for example, or where a decision is urgently needed about a medical intervention, time may be of the essence, but it will also be extremely important that the outcome is correct in law; the need for difficult and complex legal decisions to be taken within a short timescale will mean that a high level of legal and judicial input is needed quickly; containing costs may therefore be difficult, and should in any event, many would argue, be a secondary consideration in such a case.
- 3.6 A case involving a novel point of law that will have an impact on a number of other cases will also merit time and care being expended on it, even where the monetary value of the case is small. In many other cases, however, where the value of the issue in dispute is small and there are no complex legal issues, the proportionality principle will mean that the priority should be to ensure that a fair determination is reached quickly and at a reasonable cost.
- 3.7 To a large extent the proportionality principle is already incorporated into the civil legal aid scheme, in the form of the “reasonableness” requirement which has to be satisfied before public funding is provided for a court case. The same is not, however, true when we come to look at the allocation and use of other public resources in the form of judicial and court time. At the moment it is all too easy for a party who has the desire and resources to do so, to pursue (or defend) a case for an indefinite period, on the basis of little or no valid legal argument, even where the sums involved are insignificant, causing expense to his or her opponent and using up valuable public resources in the form of court time.
- 3.8 We believe that this needs to change. We also believe that the court itself is best placed to make the judgment about how a case should be initiated and presented to it, what processes it should follow, and how much of the court’s time and other resources should be allocated to it. The civil courts review will have the task of identifying how best to reform court processes so that our judges have the tools to ensure that cases are dealt with in ways which are proportionate to their monetary value and the importance and complexity of the issues raised.

VALUE FOR MONEY

- 3.9 Civil justice is a public service. The public is entitled to expect that the services provided by the different parts of the civil justice system deliver value for money. They are also entitled to expect that they meet reasonable expectations based on other, more difficult to measure values, such as treating people fairly and with respect, and being accessible. We want to try and develop indicators which will help us to assess and compare the extent to which different types of service within the civil justice system provide value and efficiency, in terms of their monetary cost both to the public purse and to the people and businesses using them, and in terms of how well they meet public expectations. This will be a complex task, involving considering what are desirable outcomes and reasonable expectations.
- 3.10 There are choices to be made about priorities for investing in the civil justice system. One of the key considerations is where the balance should lie as between supporting the

provision of advice and early resolution services, and investing in formal structures such as courts. It is not a question of preferring one to the other – both are needed. But we think it makes sense to pursue policies that work towards the early resolution of disputes, preferably by negotiation between the parties involved and without resort to the courts. So one of the factors that we believe should be incorporated in any assessment of value for money is the extent to which a service or a process helps or hinders the resolution of a dispute.

- 3.11 We also of course fully recognise that some disputes can, or should, only be resolved by the determination of a court, or by the prospect of such a determination. We see no reason why the same principle should not apply to those cases. Where court processes are necessary, we believe they should be as swift and straightforward as possible, and should work in ways which promote early clarification of the points at issue and prevent the escalation of expense.

Key principles for civil justice reform

- **Proportionality** – systems and processes that are proportionate to the importance, complexity and monetary value of the issues involved; and
- **Value for money** – making sure civil justice services are efficient, meet reasonable public expectations, and promote early resolution of disputes.

SCOTTISH CONSUMER COUNCIL CIVIL JUSTICE ADVISORY GROUP

3.12 These principles give us a benchmark against which to judge proposals for future reform. The next stage is to identify the scope for reform. A review of civil justice with too broad-ranging a remit may risk becoming unwieldy to manage and unfocussed in its work. It could also end up duplicating or contradicting reforms already under way. We believe that any review needs to focus on the areas most in need of change, and to have a remit which sets out clear parameters within which it is to work, and clear objectives which can be fulfilled within a reasonable time. It is also vital that such a review commands widespread confidence and support.

3.13 We were therefore very pleased to support the initiative of the Scottish Consumer Council, under the auspices of the Nuffield Foundation, to hold a series of seminars to examine the case for and against a review of civil justice in Scotland, and to bring out suggestions for change. Under the energetic and experienced leadership of the Rt Hon Lord Coulsfield, the SCC's advisory group, which included representatives of all the key stakeholders, produced a detailed and thoughtful report in November 2005. The report called on the Executive to establish a civil justice review and identified a number of key issues which it considered should be the main focus of that review. These were:

- The disproportionate cost of litigation, particularly in cases of lower financial value;
- Disruption to civil cases because of the priority given to criminal cases in the court system;
- The potential benefits of increased specialisation among courts and judges;
- The possibility of increasing the role of the courts in case management, which may reduce time taken and costs;
- Payment arrangements for lawyers including fixed fees;
- Increased powers to ensure court judgments are observed.

OUR RESPONSE TO THE REPORT

3.14 The Report has been extremely helpful in highlighting the issues and stimulating debate on civil justice and we agree with the general thrust of its conclusions. We would identify the first four of the key issues as being the ones where we see the most urgent need for review.

Disproportionate costs

3.15 The identification of the disproportionate costs of litigation as a major issue is very much in line with our own thinking. The relatively low level of the small claims limit – currently £750 – means that the procedure is now not available for use for many consumer claims. This undermines the purpose for which the procedure was originally intended

and means increased costs for many court users who have to raise actions under the more complex and time consuming summary cause or ordinary cause procedures. The low threshold for raising actions in the Court of Session – currently £1500 – is also now questionable. It is clearly time for a close look at how straightforward cases of relatively low value should be handled, as well as a detailed examination of the factors that merit cases being brought before the higher courts.

Specialisation and balancing the demands of civil and criminal business

- 3.16 In recent years there has been an increasing tendency to look to specialised courts or tribunals, or specialist judges, as a way of tackling some of the perceived failings within the current system. This has been evidenced by calls for more judges specialising in areas such as family law,⁶ by proposals for housing tribunals⁷ and by the setting up of new tribunals to deal with specific types of case, such as the Mental Health Tribunal, and the Additional Support Needs Tribunals.
- 3.17 It is argued by those promoting such specialisation that a tribunal is likely to be more accessible and to operate in a more “user-friendly” way than the ordinary courts. The special knowledge and experience of the members of a tribunal, or of a specialist judge, are seen as ensuring that they will

more readily understand the issues coming before them and so the quality of the decisions they make will be better than would be made by people without that knowledge and experience.

- 3.18 The argument about accessibility and user-friendliness is a strong one, but it does not necessarily require a whole new structure to achieve these – changing the way the existing processes work so that our ordinary courts become less intimidating and more accessible may be an equally good, or better, way of achieving the desired result.
- 3.19 As regards specialist courts, we agree that the development of a body of judges with special knowledge and experience in particular areas may well enhance our civil justice system. We also agree that there is a need to look at how the courts balance the pressures of criminal and civil business, and examine whether there should be more separation. We must not, however, lose sight of the fact that Scotland is a relatively small country with a mix of urban and rural courts, and a limited pool of judges. The current system where the local sheriff courts are able to deal with the whole range of business has distinct advantages as well as disadvantages. The issues surrounding how we achieve an appropriate balance between greater specialisation and local delivery clearly merit detailed examination.

⁶ See for example, the Report of the Justice 1 Committee on Stage 1 of the Family Law (Scotland) Bill, paragraph 139. <http://www.scottish.parliament.uk/business/committees/justice1/reports-05/j1r05-08-vol01-01.htm#structure>

⁷ See for example Derek O’Carroll & Susie Scott *A housing tribunal for Scotland? Improving rented housing dispute resolution*, Chartered Institute of Housing in Scotland, March 2004

Case management

3.20 We are very much in sympathy with the suggestion that the potential benefits of case management should be examined in depth. We have already seen the value of case management in the High Court reforms and in the Commercial court procedures in the sheriff court, and believe that there are further benefits that could be attained. We would agree that there are a number of possible options for changes to existing procedures, whereby the court is given greater control over the way cases are dealt with, that a review might usefully consider. These could include the possibility of a procedure to deal with multi-party actions or to group similar cases together, greater powers to control the amount and nature of evidence presented and whether this is done in written submissions or by oral argument, and powers to refer disputes to mediation or another form of alternative dispute resolution.

3.21 As regards the other two issues highlighted by the report, i.e. payment arrangements for lawyers, and the enforcement of court judgments, we agree that these certainly merit further examination.

Payment arrangements for lawyers

3.22 Lawyers, like any other profession, are entitled to seek fair remuneration for their services, which are largely provided on an open market basis. We would be happy to see the growth of fee arrangements which improve the transparency and predictability of legal costs and increase choice for consumers, and will welcome any moves made by the profession to control costs. The Report of the Research Working Group on the Legal Services Market in Scotland,

published in May 2006, considers a number of issues in relation to payment for lawyers. We and the relevant stakeholders are now considering these further. The Executive's remit to intervene directly in payment arrangements is, however, limited to those areas where payments are funded from the public purse, or ancillary areas where there is a public role to be performed, such as the taxation of costs by the auditors of court.

Enforcement of court judgments

3.23 We have already undertaken an overhaul of our system of court enforcement in the **Bankruptcy and Diligence etc. (Scotland) Act 2007**. Reform will strike a better balance between the interests of debtors and creditors, and provide for independent review of the effectiveness of the reformed system by the Scottish Civil Enforcement Commission to be set up under that Act. Decisions on the operational date for the Commission will be taken by the incoming Administration. We would therefore not rule out new reforms that will further improve the effectiveness of the system.

THE FUTURE DIRECTION OF CIVIL JUSTICE REFORM

3.24 Following the publication of the Consumer Council's report, we held a number of meetings with a broad range of stakeholder interests to discuss its conclusions and help us to reach a decision on what our next steps should be. We also brought the issues before the Scottish Parliament in a broad-ranging debate on Civil Justice Reform on 20 April 2006. The report, the meetings and the debate have all helped us

to re-assess our priorities for future civil justice reform and to identify where there are gaps which need to be filled. They revealed a clear consensus on two main issues:

- It is vital that people have access to **good quality information and advice**, and in some cases representation, particularly at an early stage in a dispute in order to try and prevent problems escalating and positions becoming entrenched;
- The **civil courts** do not, on the whole, currently provide processes which help to resolve disputes at the earliest possible stage, or at a proportionate economic cost. In fact current court process are able to deal fairly quickly and economically with undefended cases, especially low value debt cases in the sheriff court, but there is a widely held view that disproportionate costs and unacceptable delay are an inevitable consequence when a case is defended.

3.25 We believe the priority for civil justice in the foreseeable future should be to address these issues. Chapters 4 and 5 explain what has already been done and what is currently in progress or planned. The detailed development of plans for long term reforms will be for a future Administration to decide.

Information and advice

3.26 We are already doing a great deal to improve access to advice and information and will continue to pursue the programme of work already under way, as set out in Chapter 4. We will increase access to good quality legal information, advice and representation, including publicly funded legal assistance, and continue to support and raise awareness of mediation and other processes that promote early dispute resolution.

The civil courts

3.27 Chapter 5 sets out a number of recent and current initiatives aimed at improving court processes. We have, however, come to the conclusion that there is a need for an in-depth look at the structure and procedures of our civil courts, with a remit to produce recommendations for changes to achieve a system which deals with cases justly, within a reasonable time and at a reasonable cost, i.e. which provides proportionate dispute resolution. We believe that such a review needs to be led by a senior member of our judiciary and are delighted that Lord Gill has agreed to take on this extremely important task. We envisage that the remit will be broad enough to encompass an examination of the issues raised by the four conclusions of the Scottish Consumer Council report which we discuss at paragraphs 3.15 to 3.20 above.

A decorative blue line graphic consisting of a horizontal line that steps down at the left edge and then continues horizontally to the right.

Modernising civil justice – our priorities

- we will continue our work to **increase access** to good quality legal **information, advice and representation** in civil matters, including publicly funded legal assistance; and
- we will establish a **review of our civil courts** under the leadership of Lord Gill.

4

The importance of good quality, accessible advice and information about the law and the legal system cannot be overstated.

- 4.1 At its best, the right information and advice, made available at the right time, can help ensure that people make the right choices when making decisions which have legal consequences for them. It can help a young person leaving home understand what responsibilities they are taking on when they sign a lease; help a parent understand what the consequences are of registering the birth of a child; help people manage their money and not take on debts they cannot repay; help someone setting up in business decide whether to trade in their own name or as a limited company; and help someone to support an elderly relative to manage their affairs. These are all common everyday situations where, without the right information and advice, it can be difficult to make the right decision.
- 4.2 Advice and information is also vital if things go wrong or unexpected events happen. People need to know where to go for advice and information, and to have confidence that the advice they receive will be appropriate and of good quality. Different problems need different types of advice, and different levels of intervention. Some situations may be sorted out by simply getting information about a complaints system or an industry-supported arbitration service. Sometimes a local Citizens' Advice Bureau or Welfare Rights Office will be able to provide the advice needed. And sometimes the problem will be best dealt with by a solicitor.
- A range of advice and information services and providers is needed, and people need to know where they are and how they can help.
- 4.3 Where some kind of process has to be gone through to resolve the situation, the majority of people will want to ensure that the process is as quick and painless as possible and that they can influence the outcome. In some cases a court process will be required, for example, where the authority of the court is required to recover property or obtain recompense for injury, to prevent damaging or destructive behaviour, or to challenge the actions of a public authority. In many instances, however, negotiation-based methods of dispute resolution, such as mediation, can offer an alternative way of reaching a conclusion in a dispute, or can at least help to focus the key issues and preserve a process of dialogue which may avoid positions becoming too entrenched.
- 4.4 Representation or advocacy can be just as vital as advice and information. The law and the legal system are complex, and although some people may be happy to speak for themselves in negotiating with the person on the other side of a dispute, or to argue their own case at a court or tribunal, many will not. It is therefore essential that people can have access to good quality representation when they need it, at a price they can afford.

Advice and information – key aims

- ensuring people have **access to good quality information and advice** to enable them to understand their rights and obligations and avoid problems;
- when problems do arise, ensuring people have access to advice and, where they need it, to representation, to **prevent problems escalating** and resolve them as quickly as possible; and
- encouraging the use, where appropriate, of negotiation-based methods of dispute resolution such as **mediation**.

WHAT WE HAVE DONE

- 4.5 In 2004 the **Strategic Review of the Delivery of Legal Aid, Advice and Information** made recommendations to Scottish Ministers and the Scottish Legal Aid Board. The review looked at the criteria for the granting of legal aid and advice and assistance for both civil and criminal matters. It also asked some searching questions about the future role of the Scottish Legal Aid Board and whether there should be a new national body to co-ordinate the delivery of publicly funded legal assistance. A consultation entitled **“Advice for All: Publicly Funded Legal Assistance in Scotland – the Way Forward”** was subsequently published in September 2005. The first phase of proposals from the review was taken forward in the **Legal Profession and Legal Aid (Scotland) Act 2007**. More wide-ranging changes, by way of new primary legislation, regulatory changes and administrative action are expected to be brought forward in future months and years.
- 4.6 A strong, sound and independent legal profession, in which the public has confidence, is one of the cornerstones of the justice system. Our consultation on **“Reforming Complaints Handling, Building Consumer Confidence – Regulation of the Legal Profession in Scotland”**, invited views on how best to address concerns about the way complaints against the profession have been handled, and to improve public confidence in the system. The Legal Profession and Legal Aid (Scotland) Act 2007 contains measures which take account of views expressed by members of the public in response to the consultation.
- 4.7 The first **in-court advice project**, set up in Edinburgh Sheriff Court in 1997, has proved to be a considerable success. Further in-court advice projects were established in Aberdeen, Airdrie, Dundee, Hamilton and Kilmarnock in 2002/03. An evaluation published in January 2006 has indicated that these services are a valuable resource which was particularly able to meet otherwise unmet legal need for people involved in court proceedings. We confirmed in January 2006 that funding for the services would be continued for a further 3 years to allow further evaluation and consideration of how such services should be developed.
- 4.8 We have for many years invested in a number of **national family relationship support bodies** and over the last 2 years have invested in moves by them to integrate their services and project work, for clients’ benefit. Alongside the legal reforms achieved by the Family Law (Scotland) Act 2006, we have provided support for families in transition by producing the **Parenting Agreement for Scotland** and the **Grandchildren’s Charter**.

- 4.9 We have put in place a number of projects aimed at increasing the availability of information for people affected by debt. The **Debt Arrangement Scheme** was established in 2004 under the **Debt Arrangement and Attachment (Scotland) Act 2002** to provide assistance in setting up a managed environment in which people can repay multiple debts over time, free from the threat of enforcement action or sequestration. We provided £3 million each year from 2002/03 to 2006/07 to develop money advice services and to support an increase in the number of frontline money advisers. In each of the years 2005/06 and 2006/2007 we made a further £2 million available to carry on that work and to meet the demand for money advisers approved to use the Debt Arrangement Scheme.
- 4.10 The 2002 Act also made it a requirement that creditors supply debtors with a copy of the **Debt Advice and Information** package, consisting of the booklet “Dealing with Debt: Finding Your Feet”, and a leaflet about local Money Advice services, before they can use the diligence of attachment.

- 4.11 At the European level we are part of the **European Judicial Network in Civil and Commercial Matters**. This provides contact points in all EU jurisdictions to allow officials and organisations to obtain information quickly about civil justice systems in other countries. It also promotes access to information for the general public through the EU Commission’s EJN website.

WHAT WE ARE DOING

- 4.12 Our **information initiative to support family law reform** aims to improve the range of information available for couples, families and children. It includes a new web portal,⁸ a pilot integrated help-line and a new range of printed materials for couples and young people. Working closely with a small number of sheriff courts, we will also pilot new approaches to child contact in conflicted cases. And we have invested a further £300,000 during 2006/07 in relationship counselling and mediation at local level.
- 4.13 The family law web portal is linked to the new **advicefinder** problem-solving website,⁹ launched in May 2006. This aims to act as a gateway to sources of information and advice on the whole range of civil legal problems that people may face, such as debt, housing, employment, benefits, etc.

⁸ www.scotland.gov.uk/familylaw

⁹ <http://www.infoscotland.com/advice>

- 4.14 The **Debt Arrangement Scheme** is under review and was amended to extend it to other diligences by the Bankruptcy and Diligence etc. (Scotland) Act 2007 and by changes to administrative procedures by the Accountant in Bankruptcy. The **Debt Advice and Information** package is also under review.
- 4.15 The Bankruptcy and Diligence etc. (Scotland) Act paved the way for money advisers to provide **lay representation in court for debtors**, and the Scottish Civil Enforcement Commission will be given a specific function of **improving public knowledge** and education as regards diligence and enforcement of decrees.
- 4.16 In the field of alternative dispute resolution, we have a strong programme of work to promote quality control and **good practice in mediation** and to **raise public awareness** about it. Here we are working in partnership with the Scottish Mediation Network (SMN), which has been funded by the Executive to develop a quality assurance framework across all spheres of mediation. SMN is also running awareness workshops and presentations and the Executive supported their mediation conference in September 2006.
- 4.17 We are currently developing a strategy for mediation research through the Justice Department Analytical Services Division and aim to commission an evidence review of mediation to guide this process. Simultaneously, a number of research projects have been undertaken or are underway in relation to mediation. Analytical Services are currently working with SMN to build in a framework for evaluation. A survey has also been undertaken of both sheriffs and judges on awareness of, and attitudes towards, mediation, and an evaluation of the In-Court Mediation Pilots is about to get underway.
- 4.18 As well as continuing to support the mediation service running alongside the in-court advice service in Edinburgh sheriff court, two new **in-court mediation services** are also being supported by the Executive, one in Glasgow and one in Aberdeen. These pilots will run for 2 years and have been designed to test different models of provision to help inform decisions about future sustainability of such services.
- 4.19 There is strong interest in mediation and other forms of alternative dispute resolution at a European level and we are continuing to contribute, in partnership with the UK Government, to the development of a draft **EU directive on mediation**.

- 4.20 The **Legal Profession and Legal Aid (Scotland) Act 2007** will bring about significant improvements to, and increase public confidence in, the system for handling **complaints against the legal profession**. It provides for the establishment of a Scottish Legal Complaints Commission (SLCC) which will handle consumer or service complaints against the legal profession, as well as overseeing the handling of discipline issues by the legal professional bodies. The Act also puts in place the first phase of **improvements to legal aid** and will pave the way for the longer-term strategy by giving the Scottish Legal Aid Board additional powers to fund new models of provision for publicly funded legal assistance.
- 4.21 Alongside these primary legislative changes, we continue to **monitor the operation of the civil legal aid regulations** with a view to updating and revising them in response to stakeholder responses in addition to initiatives at a European, UK and Scottish Executive level. These include making the necessary amendments to support new court and tribunal procedures. In addition, the Scottish Legal Aid Board has started a project to look at ways of simplifying civil legal assistance for solicitors, applicants and opponents. That will include simplification of the financial eligibility assessment process for applicants; reduction of documentation required for the civil legal aid application process; and development of a training support strategy for solicitors.
- 4.22 As part of our longer term strategy in relation to public funded advice and assistance, we will shortly publish a tool-kit and guidance to support local authorities to **assess the needs for advice and assistance** within their areas. We are also working with the Scottish Legal Aid Board and a number of advice agencies to develop a **national quality framework for legal advice and information**.
- 4.23 Arbitration is a specialised procedure in which disputes are referred, by agreement between the parties involved, to an independent third party, the arbiter, to resolve. The majority of the law relating to arbitration in Scotland is common law. In the 1990s the Scottish Advisory Committee on Arbitration Law, under the chairmanship of Lord Dervaird, undertook a detailed review of the law and produced a report making a number of recommendations for change. A draft Bill was also prepared. We are currently undertaking a project to assess the case for bringing forward legislation to **update and restate the law of arbitration** in Scotland, building on the work done by the Committee.

Improving access to information and advice

- **in-court advice** projects in Edinburgh, Aberdeen, Airdrie, Dundee, Hamilton and Kilmarnock;
- new printed materials and web portal giving **information for couples, families and children**; and
- *advicefinder* gateway website to sources of information and advice.

Resolving disputes outwith court

- support for the Scottish Mediation Network to raise **public awareness** and promote **good practice in mediation**;
- **mediation services** in Edinburgh, Glasgow and Aberdeen sheriff courts; and
- developing legislation on **arbitration**.

WHAT WE WILL DO

- 4.24 We will take forward the work we have started on reform and restructuring of the system of **publicly funded advice and assistance**. Our aim is to achieve a mixed economy of provision, with legal practitioners, not-for-profit organisations, local authorities and central government working in partnership to ensure everyone in Scotland has access to the advice and assistance they need, at a cost they, and the public purse, can afford. The next key stage could be the creation of a **national co-ordinating body** with wide powers to support the development of a healthy and vibrant network of service providers. This will be a matter for an incoming Administration.
- 4.25 We are working to set up the Scottish Legal Complaints Commission to deliver the policy objective of increasing public confidence in arrangements for handling complaints about legal services. The anticipated operational date for the Commission is late 2008. It will be for the incoming Administration to decide whether to take forward our programme of work reviewing arrangements for the **regulation of the legal profession** and **promoting competition** in the provision of legal services in Scotland. This programme aims to identify pro-competitive reforms in the consumer interest which are suited to the Scottish legal services market. Account is also being taken of developments elsewhere, including the changes proposed in the Legal Services Bill for England and Wales in the light of the Clementi Review.
- 4.26 We will commence sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to permit professional or other bodies to apply for **specific rights of audience** and rights to conduct litigation on behalf of their members.
- 4.27 The current arrangements whereby auditors of court deal with the assessment and checking (known as “**taxation**”) of **parties’ legal expenses and solicitors’ accounts** resulting from litigation and other legal work are outdated and lack transparency. We will work in partnership with the courts and the legal profession to consider what the future arrangements for assessment and taxation of accounts should be.

Advice and information – key future actions

- reform and restructuring of system of **publicly funded advice and assistance** on civil matters, including creation of a national co-ordinating body;
- commencement of sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act by mid-March 2007; and
- reform of the system of assessing solicitors’ accounts and legal expenses.

5

Our court and tribunal systems are key to the protection and enforcement of legal rights and responsibilities.

5.1 Not all disputes can be, or ought to be, resolved by negotiation between the parties involved. Sometimes the authority of the court is needed to obtain recompense for loss or injury, to protect rights or to challenge decisions and actions of public bodies. In some cases there may be power imbalances that put the parties on an unequal footing and would allow one party to put undue pressure on the other. This could arise from the relative economic positions of the parties or from the nature of the personal or business relationship between them. In other cases there may be uncertainties in the law which it is important to clarify, either because there is a lot at stake in a particular case, or because its outcome could affect a number of other cases. It is therefore vital that we have a system of courts and tribunals to provide decisions determining the rights and responsibilities in such cases.

5.2 The Executive's aim is to make sure that we have available the right structures and institutions in the form of appropriate courts and tribunals, and that these operate efficiently. Disputes which need to be resolved using a formal determinative or judicial process should be dealt with in as straightforward a way as possible, in a reasonable time and at a cost which is proportionate to the importance and value of the issues involved. Procedures should aim to focus the points at issue at an early stage, and give the court powers to ensure that cases move forward as quickly as is consistent with justice. The exercise of the determinative or judicial function is, of course, the responsibility of the judge or tribunal who is dealing with the case, and has to be exercised impartially and independently. The Executive's responsibility is to ensure that appropriate resources are made available and used in ways that provide optimum support to the judicial process.

Streamlined civil procedures – key aims

- clear, straightforward processes;
- efficient systems that keep delays and costs down; and
- effective use of resources.

WHAT WE HAVE DONE

- 5.3 The Sheriff Court Rules Council has the statutory responsibility for keeping the rules of the Sheriff Court under review. The Council instructs new or revised rules where it considers it necessary and submits these to the Lord President of the Court of Session, who formally makes the rules. We have supported the Rules Council to put in place a number of improvements in procedures in the Sheriff Court. One of the most significant of these was the introduction in 2001 of **new rules for commercial cases**; these have been put into effect in Glasgow and Aberdeen. Recent research¹⁰ in Glasgow has shown that they are operating very effectively and that the commercial court is a valued service to its users.
- 5.4 We also supported the Rules Council in its **revision of the Small Claims and Summary Cause Rules**. New Small Claims and Summary Cause Rules were put into effect in 2002. In addition, we have provided advice and support to ensure that the rules of the Sheriff Court have been revised and updated as required to reflect the requirements of a wide variety of provisions in new legislation requiring **civil court orders or appeals provisions**. Examples include the new rules required in relation to anti-social behaviour orders and to support the guardianship and intervention provisions of the Adults with Incapacity Act.
- 5.5 We welcomed the initiative by the Court of Session to revise the rules dealing with **personal injury** cases in 2003 and the Sheriff Principal of Glasgow and Strathkelvin's more recent personal injury pilot court.
- 5.6 The **Vulnerable Witnesses (Scotland) Act 2004** will, when it is fully brought into effect, ensure that vulnerable witnesses in civil as well as criminal cases are given the benefit of special measures to assist them in giving evidence.
- 5.7 We are determined to ensure that our system of civil justice provides fair and effective procedures for the enforcement of legal obligations once they have been determined by the courts. Without such procedures court orders would have no value. The Debt Arrangement and Attachment (Scotland) Act 2002 introduced an alternative procedure to that of poinding and warrant sale, namely **attachment and exceptional attachment** orders.

¹⁰ Research into the operation of the Commercial Court procedure in Glasgow Sheriff Court, by Elaine Samuel, Scottish Executive Social Research 2005 <http://www.scotland.gov.uk/Publications/2005/10/28163103/31038>

5.8 Many legal problems and disputes are dealt with not by the ordinary courts, but by specialised tribunals set up to deal with specific kinds of cases. Many of these involve areas of law which are reserved to the UK Government, such as social security, employment law or tax. We took part in the UK Government's **review of the systems of tribunals** which deal with these kinds of case and we have worked with the UK Government to ensure that the proposals for a GB-wide tribunal service, which have been brought forward by the UK Government in the **Tribunals, Courts and Enforcement Bill**, will work effectively within the Scottish legal system. A Legislative Consent Motion regarding that Bill was passed on 31 January 2007 and we support the work of the Administrative Justice Steering Group, chaired by Lord Philip, in looking at the administrative justice system in Scotland.

WHAT WE ARE DOING

5.9 In February 2006 we published a consultation on the unification, appointment, removal and management of Scotland's judiciary, containing proposals to **strengthen judicial independence** and give the judges greater opportunities to secure the efficient and effective disposal of business in the superior courts and the sheriff courts. We are committed to placing the Judicial Appointments Board on a statutory basis and to carrying out the other proposed reforms. At the time of publication of this report, we are in close consultation with the judiciary about a number of issues related to the publication of the consultation document.

Ministers' present intention is to make as much progress as possible with a draft Bill on the judiciary which would be fit for introduction by the new Administration, if it were so minded, shortly after the election in May 2007.

5.10 The report of the **Agency Review of the Scottish Court Service (SCS)** carried out by Douglas Osler CB KSG, was published in February 2006. The Minister for Justice has agreed the action plan which was prepared by the SCS in response to the Agency Review recommendations. The SCS Customer Satisfaction Survey for 2006 reported good overall levels of satisfaction with SCS services and facilities among both professional and non-professional court users, with over three-quarters reporting that they felt satisfied overall – a 77% satisfaction rating, against a corporate target of 75% in the SCS Corporate Plan. Around 5% of customers expressed some degree of dissatisfaction.

5.11 We continue to support the Sheriff Court Rules Council in a range of projects. These include its consideration of the place of **alternative dispute resolution in the court process** and its liaison with the Court of Session Rules Council on the same issue; the extension of the **use of information technology in Sheriff Court process**; its consideration of whether the type of rules used in the **commercial court** should be extended to be used more broadly in other types of case; and consideration of whether to introduce rules for **personal injury** cases similar to those which we understand are working successfully in the Court of Session.

WHAT WE WILL DO

- 5.12 In the European context, we are involved in a number of EU initiatives which aim to make it easier for European citizens to pursue **civil claims throughout the European Union**. These include European initiatives in relation to small claims, orders for payment, enforcement, insolvency, intellectual property and parental responsibility.
- 5.13 The **Bankruptcy and Diligence etc. (Scotland) Act 2007** modernises the law relating to bankruptcy and introduces new court procedures and administrative arrangements aimed at making the law more transparent and more effective for creditors while affording appropriate protection to debtors. The Act also makes further improvements to the law relating to the **enforcement of civil obligations** by creating the new diligences of land attachment, residual attachment, money attachment and interim attachment, and reforming existing enforcement procedures such as arrestment of funds or goods, earnings arrestment and inhibition. It also puts in place a new system for regulating the professions of Messengers-at-Arms and Sheriff Officers, unifying them into a single profession to be known as Judicial Officers.
- 5.14 We will support Lord Gill to undertake a comprehensive **review of the structure, jurisdiction, procedures and working methods of the civil courts** in Scotland. We will provide appropriate administrative and analytical support to the review team to enable it to carry out its work effectively within the time scales to be agreed. Chapter 3 of this paper sets out in more detail the background to the decision to set up the review and the policy principles which will underpin it.
- 5.15 In relation to inquiries, we will consult in March on draft **rules for Scottish inquiries** under the Inquiries Act 2005, with the aim of ensuring that such inquiries operate as efficiently and effectively as possible.
- 5.16 There are two significant developments in civil justice at the international level which we are taking forward in conjunction with our European partners. These will promote improvements to the international system for the **recovery of maintenance payments**, through the updating of the Hague Convention on Maintenance. We will also, in conjunction with other EU member states, ratify the new Hague Convention on Commercial Choice of Court Agreements, which will protect **choices made by businesses as to the jurisdiction** in which they wish to settle their disputes.

Streamlined civil procedures – key actions

- we will provide appropriate support to enable Lord Gill to carry out an in-depth review of our civil courts;
- we will consult on rules for Scottish inquiries; and
- we will implement improvements to the law on **enforcement of civil obligations** and the regulation of the professions of Messengers-at-Arms and Sheriff Officers.



SCOTTISH EXECUTIVE

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