

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
ACCESS TO JUSTICE COMMITTEE  
19 FEBRUARY 2024 AT 4.15 PM  
VIA MICROSOFT TEAMS**

**MINUTES**

- Present:** Lady Carmichael (Chair)  
Joel Conn  
Employment Judge d’Inverno  
Fiona Drysdale  
Dean Purdie  
Hazel Thoms
- In attendance:** Chris Fyffe (Court of Session)  
Kirsty Hyslop (SCTS)  
Kirsten Henderson (SCTS)
- Support:** Jessica Flynn (SCJC)  
Karen Stewart (SCJC)  
Paula Preston (SCJC)  
Graeme Welsh (SCJC)

**Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and noted apologies from: Thomas Docherty, Craig Anderson, Karen Auchincloss, Sheriff Principal Wade, Sheriff Martin-Brown.
2. Members agreed not to publish the following papers: Papers 3.1, 3.1B, 3.2, 3.3.

**Item 2: Previous meeting**

*Item 2.1 – Items by Correspondence (Paper 2.1)*

3. Paper 2.1 noted one matter which had been considered by correspondence since the last meeting. In considering matters by correspondence, members are advised that a nil response will be treated as consent, unless noted otherwise.
  - Item 2023/26 was issued on 23 November 2023 and invited members to approve the draft minutes of the Committee meeting on 24 April 2023.

Responses were invited by close of business on 30 November 2023. One response was received. The approved minutes were published on the Council website.

**4. The Committee noted the contents of the paper.**

**Item 3: Justice System Reform**

***Item 3.1 – Simple Procedure Special Claims: Part 24 Aliment (Papers 3.1, 3.1A, 3.1B, 3.1C)***

5. The draft special claims rules instrument was approved in principle by Council in May 2017 pending the outcome of the Review of Simple Procedure. The Committee is now reconsidering the draft instrument having had the benefit of operational feedback and outputs from the Simple Procedure Review.
6. The Committee considered Paper 3.1A which provided an overview of aliment and Paper 3.1C which contained related statistical information obtained from the Scottish Courts and Tribunals Service.
7. The Committee considered the papers containing policy queries and proposals for amendments to part 24 of the draft instrument relating to aliment claims. The Committee made the following decisions:

Draft Rules

*Draft rule 24.1 - What is this part about?*

8. The Committee discussed the draft rule and agreed that the wording should be reviewed with a view to clarification and to consider whether an interpretation clause or glossary notation could be utilised for the necessary technical detail. The Secretariat will discuss the matter with LPPO.

*Draft rule 24.2 - How is an aliment claim made?*

9. **The Committee agreed that there are no drafting amendments required to this rule and accordingly approved the draft provisions.**

*Draft rule 24.3 - How do you complete an Aliment Claim Form?*

10. The Committee noted that the draft rule partly aligns with the related provisions in the SP rules. In order to fully align the rule with the recent procedural changes to the SP rules, the Committee agreed that draft provisions relating to lists of evidence and witnesses should be omitted.

**11. The Committee approved the draft provisions subject to the deletion of draft rules 24.3 (3) & (4).**

*Draft Rule 24.4 - What do you do with a completed Aliment Claim Form?*

12. The Committee noted that the draft rule sets out specific requirements for the production of any additional documents under the Child Support Act 1991 that are relevant to the claim. **The Committee agreed that no amendments of the rule were necessary and approved the draft provisions.**

*Draft Rule 24.5 What if the claimant does not know the respondent's address?*

13. The Committee previously considered that rules provision would be required relating to the requirement for intimation in actions under section 2 of the Family Law (Scotland) Act 1985.

14. The draft rule provides that where a respondent's address is unknown and can't be ascertained, the claimant must formally serve the Aliment Claim Form on certain other people, i.e. every child of the parties who is aged 16 years or over, and a next of kin aged 16 years or over. The Committee also noted that the rule provides that if the claimant does not know the address of any of those persons, they must instead complete a Service by Advertisement Application and send it to the court with the Aliment Claim Form. This aligns the aliment procedure with that of the core SP rules for these circumstances.

15. The SP rules set out certain duties incumbent upon the sheriff clerk in such circumstances as well as requirements of the sheriff should a respondent's address become known (see SP Rule 6.12 (4) to (6)). The Committee considered it was appropriate that these provisions should apply equally to a respondent, child, or next of kin who is to be served with an Aliment Claim Form and whose address is unknown. The Committee agreed that the draft rule should incorporate provision to this effect with such editing or cross-referencing to the SP rules as may be necessary to achieve the intended policy outcome.

**16. The Committee approved the issue of drafting instructions to this effect.**

17. The Committee noted that the current Summary Cause Rule 32.2(b) makes similar provision for intimation on another where a defender is suffering from a "mental disorder". The current approach of court rules is to rely in general on the law of incapacity to address procedural matters of this type. In this regard, the Committee agreed previously that no special rules were necessary.

**18. The Committee confirmed its' approval of this approach.**

### *Variation of aliment*

19. The Committee considered whether there should be a procedural mechanism provided in the rules for applications to vary an order for aliment. **Members agreed that there should be rules provision in this respect** and discussed various options on what type of procedure would be appropriate.
20. Three options considered were:
  - a new claim is raised
  - chapter 9 of Simple Procedure Rules is utilised
  - a bespoke application form and related procedural rules are developed.
21. The Committee discussed the various options and concluded that appropriate and proportionate approach is that a new claim should be raised in such circumstances.
22. **The Committee approved the issue of drafting instructions to this effect. The draft rule should include a requirement that a claimant notes the details of a previous award in a claim to vary.**
23. The Committee noted that the chapter title and cross-headings may require revision as well as signposting to other related provisions within the rules. Members noted that chapter 32 of the summary cause rules provides a basis which could be drawn upon.

### Draft Forms

24. The draft Aliment Claim Form (Form 24A) provides guidance for the benefit of litigants, in particular about technical matters that a claimant will need to set out when making a claim for aliment for a child where competent in terms of the Child Support Act 1991. The Committee agreed that the draft form will be reviewed to identify any potential amendments and to streamline it in a similar manner to other forms. The form should contain all relevant information and criteria pertinent to this type of claim e.g. details about the needs, resources and earning capacity of parties and any request for interim orders.
25. **The Committee agreed that the Secretariat and LIT will liaise with LPPO in order to provide revised forms for members' consideration in due course.**
26. The Committee noted that to date, no aliment response form has been provided in the rules. The Committee approved the provision of such a form, noting that this approach would align with that taken in the other special claims chapters. The Committee agreed that relevant provisions regulating the procedure for responding to an aliment claim should be set out in the rules.
27. **The Committee approved the issue of drafting instructions to this effect.**

*Service by Advertisement Application (Form 6B)*

28. The Committee agreed that the current form should be revised to enable its use in aliment claims. The Committee noted that revising this existing form will reduce the time and expense of devising a new bespoke form for this purpose.
29. **The Committee agreed that the Secretariat and LIT will liaise with LPPO in order to provide a revised form for members' consideration in due course.**
30. The Committee noted that to date, one of the key features of the special claim rules is the provision of bespoke Claim Forms for each type of claim, which have been designed to elicit from the claimant, the information required to enable a sheriff to make a decision in the case.
31. The Committee discussed whether, as an alternative to various individual forms, a single special claim form could be developed which would be capable of being used for any special claim. It is understood that technical advice would be required from SCTS on the feasibility of this approach and the potential scope of such an undertaking.
32. **The Secretariat agreed to consult with SCTS with a view to obtaining initial advice on the matter and to report back to the Committee in due course.**
33. The Committee noted that there are no bespoke standard orders provided for this chapter of the special claims rules.

*Item 3.2 - Simple Procedure Special Claims: Furthcoming (Paper 3.2)*

34. The Committee discussed Paper 3.2 and noted that members previously considered that only one rule pertaining to actions of furthcoming should be replicated in the provisions for simple procedure. That was summary cause rule 28.1 relating to expenses of a furthcoming claim. A draft rule was provided for members' consideration.
35. Members discussed the draft rule and agreed that further information was required on this matter before the policy approach could be agreed.
36. The Secretariat agreed to review the policy rationale. Joel Conn agreed to provide a briefing paper on the issues discussed.
37. **The item was continued for further consideration at the next meeting.**
38. Due to the lateness of the hour, the remaining agenda items: 3.3 and 4.1 were continued until the next meeting on a date to be arranged.

