

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
MONDAY 17 JANUARY 2022 AT 3.00 PM
VIRTUAL MEETING VIA CISCO WEBEX**

MINUTES

Present: Lady Carmichael (Chair)
Joel Conn
Thomas Docherty
Fiona Drysdale
Gillian Fyfe (Citizens Advice Scotland) present until 4.00 pm.
Employment Judge d'Inverno
Sheriff Martin-Brown
Dean Purdie
Denise Swanson (Scottish Government)
Sheriff Principal Turnbull

Attending: Diane Machin (Court of Session)
David Smith (SCTS Legislation Implementation Team)
Kirsty Hyslop (SCTS Legislation Implementation Team)

Support: Graeme Welsh (Secretary, SCJC)
Karen Stewart (Policy Manager, SCJC)
Paula Preston (Policy Officer, SCJC)
Edward McHugh (LPPO)

Apologies: Christina Bardsley (Court of Session)
Hazel Thoms (SLAB)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Christina Bardsley and Hazel Thoms.
2. Members agreed that the following private papers will not be published: Papers 3.1, 3.1A, 3.1B, 3.1C-E

Item 2: Previous meeting

Item 2.1 – Items considered by correspondence (Paper 2.1)

3. **Paper 2.1** provided a summary of two matters considered by correspondence since the last meeting.
4. In considering matters by correspondence, members are advised that a nil response will be treated as consent, unless noted otherwise.

A. SCJC Consultation on Modes of Attendance at Hearings

- Item 2021/22 was issued on 1 November 2021 and invited members to consider and approve a document setting out the Committee's response to the Scottish Civil Justice Council Consultation on the Mode of Attendance at Court Hearings. The document was prepared following members' discussions at the Committee meeting on the 26th of October.
- Responses were invited by close of business on Monday 8th November 2021. One response was received approving the consultation response. The Committee response was thereafter submitted to the SCJC.

B. Administrative Matters

- Item 2021/24 was issued on 18 November 21 inviting members to approve minutes of the Committee meeting on 26/10/21. Responses were invited by close of business on 25 November 2021.
- No responses were received. The draft minutes were approved and published on the Council website.

Item 3: Rules Review

Item 3.1 Simple Procedure Rules Review (Paper 3.1 & Appendices 1-3, Papers 3.1A-E)

5. The Chair introduced **Paper 3.1** which provided an update on recent progress with the Simple Procedure Review. The Chair advised that the Covid-19 pandemic has had a significant impact on the delivery of the Council's business and its available resources since March 2020. This meant that some Council business was suspended for a period of time during 2020 and 2021 including the work of the Simple Procedure Review. Policy and legal resources were targeted at delivering of the Council's highest priority business which included various

rules instruments that arose in response to the United Kingdom's exit from the European Union.

6. Members noted that when the Council reviewed its business priorities in March 2021, it agreed the Review work (and Simple Procedure Special Claims) would be carried forward and incorporated in the Council's Annual Programme for 2021-22. The Chair advised that the LPPO and Secretariat have resumed work on this topic and thanked them for their diligence in preparing the revised draft rules instrument (**Paper 3.1A**) and supporting policy papers for members' consideration at this meeting.
7. Members discussed a number of policy queries set out in **Paper 3.1** and additional queries raised by SCTS. Members clarified the intended policy position on certain procedural matters and confirmed a number of points to be incorporated into drafting instructions for consideration by LPPO. In particular:
 - The Service by Advertisement Form 6B is to be retained along with supporting rules provision 6.12 (3) in the original format.
 - Rule 8.4 (4) to be amended to provide that the sheriff clerk is to formally serve an 'unless order' unless otherwise directed.
 - New Draft rule 9.3(3) – LPPO and LIT are to consider the technical operation of these rules, in particular subsection (3) and (4), with a view to deleting these provisions if required; the wording of the draft rule is to be clarified.
 - The Committee withdrew its previous instruction to amend draft rule 9.3(5)(b) and agreed that no further amendment is required in relation to the timescales for the court determining applications.
 - Rule 13.3 is to be amended to provide that the Decision Form must be issued by the court to all parties.
 - The Committee withdrew its previous instruction to amend rule 15.2, 16.2 along with consequential changes to supporting forms/orders. The rules, forms and orders will remain as originally drafted.
 - Rule 15.5 and supporting Alternative Decision Application (Form 15B) are to be retained in their original formats. A new rule was instructed to provide that when an Alternative Decision is granted, it is to be sent to all parties.

- In relation to formal service by email, it was agreed that rule 18.2 should provide an exemption to SCTS regarding the formal service of initiating documents.
- Rule 18.3 is to be amended to make provision to regulate the procedure for those occasions when e-mail service is unsuccessful. In particular, members agreed that rule should provide for service by post following a failed attempt at e-mail service.
- The Committee invited the drafter to consider any consequential amendments to references throughout the rules which may be required as a result of the UK withdrawal from the EU.

8. **The Committee instructed a revised draft instrument to be prepared for members' consideration at the next Committee meeting.** It is anticipated, that the rules will at that stage, be approved for submission to the Scottish Civil Justice Council.

Item 4: Work Programme

Item 4.1 Stakeholder engagement event (Oral)

9. The Chair opened a discussion on the format and timings of a prospective stakeholder event with university law clinics, in-court advisers and other advisory bodies to hear about access to justice issues.
10. Members canvassed ideas on the potential scope of such an event including possible subject areas for discussion. Members suggested a focus on advisory bodies' experience of remote hearings during the pandemic and the impact of current operating restrictions on the provision of services would be useful. Other suggestions included discussion of good practice and/or impediments in court rules and procedure and, proposals for future service improvements. It was also proposed that liaison with the Law Society's Access to Justice Committee should be considered regarding constructive engagement and communication between solicitors and advisory bodies. Consideration should also be given to other stakeholder engagement events involving, for example, the CAB.
11. The Committee invited the Secretariat to liaise with relevant stakeholder groups to explore options and to report back to members with recommendations in due course.

Item 5: AOB

12. There was no other business raised.

Date of next meeting

13. The next meeting is on 14 March 2022 at 4.00 pm via Webex.

**Scottish Civil Justice Council Secretariat
January 2022**