

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 10 JUNE 2013

- Members present:** Lord President (Gill)
Lord Menzies
Lord Tyre
Sheriff Abercrombie QC
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)
James Wolffe QC (Advocate)
Sarah Wolffe QC (Advocate)
Eric Baijal (Solicitor)
Duncan Murray (Solicitor)
Ian Maxwell (Consumer representative)
Lauren Wood (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Frances Wasoff (LP member)
- In attendance:** Craig McCorkindale, SCS
Gillian Prentice, Deputy Principal Clerk of Session
Robert Sandeman, SG Justice Directorate (for Jan Marshall)
- Secretariat:** Kathryn MacGregor, Secretary
Ondine Tennant, Deputy Secretary
Christopher Nicholson, Deputy Legal Secretary to the Lord President
Neil Robertson, Policy Officer
- Apologies:** Sheriff Principal Stephen
Frances MacPherson, Sheriff Clerk

Item 1: Introduction, welcome and apologies

Note of Thanks

1. The Lord President wished to record his thanks to all public spirited individuals who had served on the Sheriff Court Rules Council and the Court of Session Rules Council and to the current members of the Scottish Civil Justice Council.

2. The Lord President welcomed those present and noted apologies.

Item 2: Proceedings

Item 2.1 Appointment of Deputy Chairman

3. **Members elected Lord Menzies to act as Deputy to the Chairman.**

Item 2.2 Standing Orders [Papers 2.2 and 2.2A]

4. Members considered the draft Standing Orders for the SCJC. Discussion focussed on the practical arrangements for ensuring sensitive material is stored and disposed of securely and how members' interests should be declared. Clarification was provided from the Secretariat as to the circumstances when standing order 7.1 (Emergency rules) might be invoked.
5. **It was agreed that the Secretariat would develop a standard form through which members should declare their interests and prepare a records management plan for consideration at the next meeting.**
6. **Subject to the removal of references to committee members and attendees from standing order 4.7, members adopted the Standing Orders.**

Item 2.3 – Collective decision-making [with reference to Papers 2.2 and 2.2A]

7. It was felt that decisions should be reached by consensus rather than by vote. It was noted that the standing orders provided for the recording of dissent but also that members would remain bound by decisions in the collective sense.
8. **It was agreed that minutes of SCJC meetings should be succinct and serve the primary purpose of recording decisions.**

Item 2.4 Freedom of Information [Papers 2.4 and 2.4A]

9. **Members agreed to adopt the Scottish Information Commissioner's Model Publication Scheme and subject to minor drafting points, approved the draft Publication Scheme and Guide to Information.**

Item 3: Forward Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments

10. Robert Sandeman gave an oral update on: the Draft Courts Reform (Sc) Bill and the Scottish Government's recent stakeholder engagement events, the Tribunals (Sc) Bill introduced to the Scottish Parliament on 5 May, Sheriff Principal Taylor's Review, and the Victims and Witnesses (Sc) Bill.

Item 3.2 – Update from the SCS on Making Justice Work and Shaping Scotland's courts

11. Eric McQueen gave an oral update, providing an overview of the Making Justice Work (MJW) programme and the work ongoing in relation to the proposals in Shaping Scotland's courts. Craig McCorkindale, SCS Director for Civil Courts Reform, explained how the work of the SCJC fits within the framework of MJW. In discussion, it was considered critical that links to the various MJW workstreams be maintained.
12. **It was agreed that the Secretariat would circulate links to the minutes of SCS Board and SLAB Board meetings on a regular basis. It was further agreed that MJW programme should feature as a standing agenda item.**

Item 3.3 – Impact of the legislative reform programme on the SCJC [Papers 3.3, 3.3A and 3.3B]

Rules Rewrite Project

13. Kathryn MacGregor spoke to two papers: an initial forward work programme for the SCJC and the project initiation document for the Rules Rewrite Project.
14. **Members noted the forthcoming legislative reform programme and agreed to the creation of a forward work programme by the Secretariat for consideration at the next meeting.**
15. **Members agreed to the creation of a working group to carry out the methodology phase of the Rules Rewrite project and to its remit. Expressions of interest for membership of the group are sought by 24 June 2013.**
16. **Members noted the programme of secondary legislation and the potential implications of Sheriff Principal Taylor's Review and the**

Tribunals (Sc) Bill on the forward work programme. Members with previous experience from the Court of Session and Sheriff Court Rules Councils noted that prior to taking forward work on court rules, it would be essential to ensure at an early stage that the Council had sufficient views to do so.

- 17. Members further noted practical considerations on the forward work programme, including the SCJC's budget allocation.**

Communications Strategy

- 18. It was agreed that the Secretariat should take forward arrangements for a formal launch event for the SCJC toward the end of summer and develop a communications strategy for consideration at the next meeting.**

Invitations for SCJC responses to policy initiatives

19. The SCJC considered invitations from the Finance and Justice Committees of the Scottish Parliament to submit evidence on the Tribunals (Sc) Bill and whether it wished to submit a response to the SG consultation on the treatment of civil appeals from the Court of Session.
20. In relation to the call for evidence, members considered it appropriate to respond only insofar as the Bill proposes to amend the functions and membership of the SCJC. **It was agreed the Secretariat would draft a response on behalf of the SCJC and circulate this to members for comment, the Chairman having approved the response.**
21. **It was agreed that the SCJC would not respond to the SG consultation on civil appeals from the Court of Session on the basis that the proposal related to the Draft Courts Reform (Sc) Bill which the SCJC had not been in a position to consider and in light of the narrow focus of the proposal.**
22. **In respect of future such invitations, it was agreed that these should be considered on a case by case basis.**

Item 5: Secondary Legislation

[Item 5 was brought forward]

Item 5.1 - Secondary Legislation Work Tracker [Paper 5.1 and Annexes A-E]

23. Members noted the Secondary Legislation Work Tracker, based on the legacy papers from the Court of Session and the Sheriff Court Rules Councils and agreed to its terms.

Item 5.2 – Court of Session Misc. Amendments Instrument: Reporting Restrictions [Papers 5.2 and 5.2A-D]

24. The SCJC considered a draft instrument proposing to amend the Rules of the Court of Session in respect of reporting restrictions arising from, most recently, the petition of the *BBC in A -v- Secretary of State for the Home Department*.

25. It was agreed to consult on the proposals prior to considering the draft rules further. Consultees should include the professional bodies as well as relevant media organisations and the consultation should be publicly available on the SCJC website and open for general public responses.

Item 5.3 – Court of Session Misc. Amendments Instrument: Justice and Security Act 2003 [Papers 5.3 and 5.3A-C]

26. Members considered a draft instrument proposing to amend the Rules of the Court of Session in respect of the implementation of the Justice and Security Act 2003. **Members were asked to provide any comments on the draft rules to the Secretariat following the meeting.**

Item 5.4 – Sheriff Court Act of Sederunt (Policing and Crime Act 2009) 2013 [Papers 5.4 and 5.4A-C]

27. Members considered a draft Act of Sederunt to amend the Summary Application Rules in relation to applications under the Proceeds of Crime Act 2002, occasioned by the coming into force of provisions in the Policing and Crime Act 2009. The Council approved the rules and agreed that they should be submitted to the Court of Session in due course.

Item 5.5 – Judicial Rate of Interest [Paper 5.5]

28. Members considered a paper in relation to the Judicial Rate of Interest. The issue was of significant concern to the SCJC; *however, they decided not to agree to an interim position without further detailed consideration (and not prior to the case *Farstad Supply vs Enviroco Ltd.* being disposed of by the UKSC).* The Council agreed to write to the Scottish and UK Governments to make enquiries as to whether this matter would be dealt with by primary legislation following the SLC report of 2006 on this matter. The Chairman indicated that there required to be a coordinated approach across the UK as a whole and therefore intended to discuss this matter with his counterparts in England and Wales and Northern Ireland.

Item 4: Committee Structure and associated groups

Item 4.1 – Family Law Committee [Papers 4.1 and 4.1A-C]

29. **The SCJC agreed to incorporate the existing Joint Working Group on Family Actions (JWG) into the committee structure of the SCJC to form a Family Law Committee, under the Chairmanship of Lord Brailsford. The proposed remit and membership were agreed.** It was remarked that some engagement with the Advocates Family Law Association would be useful.

Item 4.2 – Personal Injury Committee [Papers 4.2 and 4.2A and 4.2B]

30. **The SCJC agreed to the creation of a Personal Injury Committee under the Chairmanship of Lord Jones. The proposed membership and remit was agreed to.**

Item 4.3 – Additional Committees [Paper 4.3]

31. Members considered the overall committee structure of the SCJC. In addition to the Family Law and PI Committees (and the rules rewrite working group), the SCJC considered that an Access to Justice Committee and an IT Committee should be established in early course. It was agreed that the Secretariat would bring forward proposals for the remit and membership of these committees to the September meeting.

32. Although the PI and Family Law Committees' membership was agreed, it was considered that membership should be kept under review. **Expressions of interest in membership across the SCJC committees were therefore invited, however, the importance of keeping committee membership to a workable level was noted.**

33. It was felt that consideration of a Costs and Funding Committee should be deferred until Sheriff Principal Taylor's Review *reported*.

Item 4.4 – Assessment of the role of Users Groups [Papers 4.4, 4.4A and 4.4B]

34. Members agreed that the SCJC secretariat and DPCS keep the Inner House and Personal Injury User Groups under review, to consider the extent of any overlap and the necessity for both to continue.

35. The Secretariat were asked to investigate when the Consultative Committee on Commercial Actions and the SG Bar Reporters Group would meet again.

Item 6 –A.O.C.B

36. No other business was raised.

**Scottish Civil Justice Council – Secretariat
September 2013**