

# SCOTTISH CIVIL JUSTICE COUNCIL

## MINUTES

PARLIAMENT HOUSE, MONDAY 10 MARCH 2014

**Members present:** Lord President (Gill)  
Lord Menzies  
Sheriff Principal Stephen  
Sheriff Abercrombie QC  
Eric McQueen (Chief Executive, SCS)  
Lindsay Montgomery (Chief Executive, SLAB)  
Kay McCorquodale (Scottish Ministers' representative)  
Andrew Stewart QC (Advocate)  
Kenneth Forrest (Advocate)  
Eric Baijal (Solicitor)  
Duncan Murray (Solicitor)  
Ian Maxwell (Consumer representative)  
Lauren Wood (Consumer representative)  
Employment Judge Joseph d'Inverno (LP member)  
Prof. Frances Wasoff (LP member)

**In attendance:** Craig McCorkindale, SCS  
Gillian Prentice, Deputy Principal Clerk of Session  
Frances MacPherson, Sheriff Clerk  
Kenny Htet-Khin (Scottish Government)

**Secretariat:** Roddy Flinn, Secretary  
Ondine Tennant, Deputy Secretary  
Neil Robertson, Policy Officer

**Apologies:** Lord Tyre

## **Item 1: Introduction, welcome and apologies**

1. The Chairman welcomed those present and noted apologies. In particular, the Chairman welcomed new advocate members Andrew Stewart QC and Kenneth Forrest, who had recently been appointed following the departure of James Wolffe QC and Sarah Wolffe QC. The Chairman also introduced Kenny Htet-Khin, who would be taking up post during April to lead the new drafting team for the Rules Rewrite Project.
2. Members agreed not to publish the following papers: 2.2, 2.4, 4.3, 4.3A, 4.4, 4.4A, 4.5, 5.1, 5.1A-C, 5.2, 5.3, 5.4, 5.4A, 6.1 and 6.1A.

## **Item 2: Previous Meeting**

### *Item 2.1 - Minutes of previous meeting [Paper 2.1]*

3. **Members agreed the minutes from the previous meeting.**

### *Item 2.2 Progress of actions from previous meeting [Paper 2.2]*

4. Members noted the progress that had been made on various action points since the last meeting and the actions to be carried forward to future meetings. Members agreed that 'ongoing actions' should be recorded on the business tracker rather than separate papers in future.
5. There was some discussion of the fact that the Scottish Government's Bar Reporters Working Group was still underway and that a meeting of its sub-group was scheduled for later this month.
6. The analysis of responses to the Consultation on Reporting Restrictions had been published on 4 March. **It was noted that the Secretariat would revert to the SCJC with advice once the UK Supreme Court's decision in *Application of BBC Scotland re A v Secretary of State for the Home Department* [2013] CSIH 43 was available.**

*Item 2.3 - Update on activity since previous meeting [Papers 2.3 and 2.3A-C]*

7. Members considered updates on activity which had taken place since the last meeting.
8. **It was agreed that the various activity reports could be dispensed with and that the business tracker could be used to convey such information for future meetings.**
9. **The activity outline paper and reports of the PI Committee, Family Law Committee and ICT Committee were noted.**

*Item 2.4 – Business Tracker [Paper 2.4]*

10. **Members noted the business tracker.**

**Item 3: Proceedings**

*Item 3.1 – Membership*

11. **To fill the Committee vacancies occasioned by the resignation of Mr Wolffe, members approved the appointment of Ruth Crawford QC to the Access to Justice Committee and James Mure QC to the Costs and Funding Committee. The appointment of Andrew Stewart QC to the Rules Rewrite Working Group was also approved.** The Chair informed members that he had, on behalf of the SCJC, written to both James Wolffe QC and Sarah Wolffe QC to thank them for their service.

**Item 4: Forward work programme**

*Item 4.1 – Update from the Scottish Government on legislative developments*

12. Kay McCorquodale provided members with an update on progress in relation to the Courts Reform, Bankruptcy and Debt Advice, Marriage and Civil Partnership

and Tribunals Bills and the Scottish Government's consideration of Sheriff Principal Taylor's recommendations.

*Item 4.2 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland's Courts*

13. Craig McCorkindale provided an update on preparations in relation to the proposed Courts Reform (Sc) Bill. **Mr McCorkindale undertook to present an overview of the plans for implementation of civil courts reform at the next meeting.**

*Item 4.3 – Rules Rewrite Working Group Interim Report [Paper 4.3 and 4.3A]*

14. Members considered the draft Interim Report of the Rules Rewrite Working Group. **It was agreed that judicial review should be added to the suites of rules that should be taken forward as a priority. During discussion of item 4.5, members also agreed that the principle that out of date and complex language should not feature in new rules should be made clearer.**
15. There was some discussion of the process for reviewing the new rules and it was felt work should begin on developing this process, with particular regard to the baseline for measurement, in early course.
16. There was also some discussion of the timing of any rules for Alternative Dispute Resolution. It was felt that whilst resources should be focussed on the immediate priorities, consideration would need to be given to Alternative Dispute Resolution in due course.
17. **Subject to the amendments discussed, members approved the publication of the Interim Report in April 2014.**

*Item 4.4 Annual Programme 2014/15 [Papers 4.4 and 4.4A]*

18. **Members considered the draft Annual Programme for 2014/15 [Paper 4.4A] and, subject to some minor amendments, agreed to its publication in May alongside the Annual Report.**

19. Members considered the proposal in Paper 4.4 in relation to the extension of the remit of the Rules Rewrite Working Group to prepare rules not falling within the remit of existing committees. **The Secretariat was instructed to bring detailed proposals for extension of the Group’s remit and membership to the May meeting.**

*Item 4.5 Guiding Principles [Paper 4.5]*

20. Members considered **Paper 4.5** which discussed how the SCJC is currently giving regard to its guiding principles and how such regard might be better built into its work. **It was agreed that policy or rule proposals should be assessed against the guiding principles when considered by the SCJC or its committees and that this should be done by way of a short pro-forma to be developed by the Secretariat. It was also agreed that the Annual Report should include an appendix outlining how the SCJC has given regard to relation to each principle.**

**Item 5: Primary Legislation and consultations**

*Item 5.1 – Courts Reform (Sc) Bill [Papers 5.1 and 5.1A-B]*

21. **Paper 5.1** informed members that the Justice and Finance Committees had sought written evidence on the Courts Reform (Sc) Bill from the SCJC and sought views on suggested responses provided at **Papers 5.1A-B. Subject to the inclusion of the observation that consideration would require to be given to the matter of the Court of Session’s powers to regulate fees to persons beyond those specified within the Bill, members agreed the text of the responses.**

*Item 5.2 – Tribunals (Sc) Bill [Papers 5.2 and 5.2A]*

22. **Papers 5.2 and 5.2A** informed the SCJC of the establishment of the Scottish Tribunals and Administrative Justice Advisory Committee and provided advice on the extent to which the provisions of the Tribunals (Sc) Bill would confer functions on the SCJC in relation to administrative justice. **Members noted the content of Paper 5.2 and agreed to consider the question of the SCJC’s future**

**role in relation to administrative justice once the Committee has given further thought to the matter.**

- 23. Members wishing to attend the Committee's planned stakeholder engagement event on 1 April were asked to contact the Secretariat to make the necessary arrangements.**

*Item 5.3 Proposals for the Damages Bill [Paper 5.3]*

- 24. Members considered Paper 5.3 which outlined the PI Committee's consideration of the Scottish Government's response to issues raised in its consultation on proposals for a Damages Bill. Members noted the Committee's preliminary views and instructed it to further consider the matter following the introduction of the Bill to Parliament, with a view to formulating a response for the consideration of the SCJC.**

*Item 5.4 Law Reform (Miscellaneous Provisions) Act 1949: Proposed Repeal [Papers 5.4 and 5.4A-B]*

- 25. Members considered Paper 5.4 which advised that the Scottish Law Commission had sought the SCJC's views on the proposed repeal of the Law Reform (Misc. Provisions) Act 1949.**
- 26. The Secretariat was instructed to respond to the effect that the SCJC had no objections to the proposed repeal but that it considered there would be merit in consulting the Scottish Child Law Centre on the matter.**

*Item 6.1 Recovery of documents (SCR) and Variation of the Personal Injury Action Timetable [Papers 6.1 and 6.1A]*

- 27. Paper 6.1 sought the SCJC's approval of a draft instrument [Paper 6.1A], prepared by the PI Committee, proposing to: a) amend the optional procedure for the recovery of documents in Summary Cause personal injuries actions where each party is legally represented and b) to remove in the Rules of the Court of Session, the Ordinary Cause Rules and the Summary Cause Rules, a superfluous discretionary power to put cases out By Order where a record had not been lodged and remove the word "special" from the special cause that needs to be shown to vary the timetable.**

28. **The draft instrument was approved for submission to the Court of Session.**

**Item 7: A.O.C.B**

29. The Chairman proposed that in future, non-controversial or urgent matters might be dealt with by correspondence. **The approach was agreed, subject to the caveat that members could request that any such matter be tabled for discussion at a meeting.**

**Item 8: Dates of next meetings**

30. **Members noted meeting dates for the remainder of 2014 as provided on the agenda and that the next meeting will take place at 10.00am, 12 May 2014.**

**Scottish Civil Justice Council Secretariat**

**March 2014**