

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 11 MAY 2015

- Members present:** Lord Menzies (Chairman)
Lord Tyre
Sheriff Principal Abercrombie QC
Sheriff Hughes
Kay McCorquodale (Scottish Ministers' representative)
Andrew Stewart QC (Advocate)
Kenneth Forrest (Advocate)
Eric Baijal (Solicitor)
Jacqueline Harris (Solicitor)
Paul Reid (Solicitor)
Ian Maxwell (Consumer representative)
Prof. Fran Wasoff (LP member)
Employment Judge Joseph d'Inverno (LP member)
- In attendance:** Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (SCTS Policy and Legislation Branch)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)
- Secretariat:** Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Kenny Htet-Khin (Head of the Rules Rewrite Drafting Team)
Graham Crombie (Rules Rewrite drafting Team)
Stephen Feltham (Rules Rewrite Drafting Team)
Luke McBratney (Rules Rewrite Drafting Team)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Anne Hampson (Policy Officer Scottish Civil Justice Council)
- Apologies:** Lord President
Eric McQueen (Chief Executive, SCTS)
Lauren Wood (Consumer representative)

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present and noted apologies from the Lord President, Eric McQueen and Lauren Wood.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.2, 4.3, 4.4, 4.4A-B, 5.1, 5.2, 5.2A-B, 5.3, 5.3A, 5.4, 5.4A-B, 5.5, 5.5A-B, 5.6, 5.6A, 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 actions since the last meeting.**

Item 2.3 – Items considered by correspondence [Paper 2.3]

5. Members noted **Paper 2.3** which provided a summary of the outcome of consideration given to the following matter raised by correspondence since the last meeting:

- A. Draft rules to amend the sheriff court rules relating to implementation of section 38 of the Courts Reform (Scotland) Act 2014 and the new competences of the sheriff. These rules simply replicate the Court of Session rules, amended as required to fit sheriff court procedure. The Rules were laid on 23rd April and come into force on 25th May.

Concerns had been raised in correspondence in relation to the terminology used within the rules. It was suggested that the use of terms such as ‘proving the tenor’ was not in keeping with the Rules Rewrite Programme’s commitment to write in clear and accessible terms. **These concerns were raised at the meeting and, following discussion, members agreed to remit the issue of the use of legal terminology to the Rules Rewrite Committee (RRC) for further consideration. They also agreed**

that the RRC should seek the views of the Access to Justice Committee as part of that consideration.

- B. Members considered a draft response in relation to the call for evidence for the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill. It was agreed to submit a general response welcoming the introduction of the Bill and supporting its general principles.

Item 3: Proceedings

Item 3.1 – Committee Membership [Oral]

6. The Chairman formally notified members of the Lord President's announcement to retire with effect from 31 May 2015. He explained that the First Minister will need to convene a panel to fill the vacancy arising and that the Lord Justice Clerk will exercise the functions of the Lord President during the vacancy period.
7. **Members wished to record their thanks and appreciation to Lord Gill for all he has achieved. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 which established the Council followed from Lord Gill's recommendations and he has led and chaired the Council effectively, with sympathy and a direct vision of where the Council was heading.**
8. **Roddy Flinn** updated members on changes to Committee membership. He explained that Ian Maxwell has been nominated to fill the SCJC vacancy on the Family Law Committee. It was also recommended that Richard Maconachie, Chief Finance Officer, SCTS take up the paper membership within the Information and Communication Technology Committee in place of Lawrie McDonald. **Members approved the Committee appointments.**
9. MSPs (and MPs) are already excluded from membership of the SCJC. Members were asked to note that that the SCJC has been consulted in relation to being added to the list of office holders contained in the Scottish Parliament Disqualification Order 2010. This has the effect of disqualifying members of the Council from being an MSP. As such, adding the SCJC to the Disqualification Order simply makes a reciprocal provision. **The Council noted the update and indicated that it was content.**

Item 3.2 – Costs and Funding Committee Remit [Paper 3.2]

10. Members considered a revised remit for the Costs and Funding Committee which has been extended to allow for preliminary consideration of the preparation of draft fees rules. **Members approved the revised remit.**

Item 4: Work programme

Item 4.1 – Update from the Scottish Government on legislative developments [Oral]

11. Kay McCorquodale provided members with an update on progress in relation to the Air Weapons and Licensing (Scotland) Bill which begins Stage 2 on 13 May; the Human Trafficking and Exploitation (Scotland) Bill which has the Stage 1 Debate on 12 May; the Inquiries into Fatal Accidents and Sudden Deaths etc., (Scotland) Bill which began Stage 1 evidence sessions on 5 May; and the implementation of the Victims and Witnesses (Scotland) Act 2014.
12. In relation to Members' Bills, Kay advised that the Scottish Government Memorandum to the Justice Committee had been published on 1 May on the Apologies (Scotland) Bill and that the Scottish Government were maintaining a neutral position on the legislation; Patricia Ferguson has until June 2015 to introduce her Inquiries into Deaths (Scotland) Bill.

Item 4.2 – Update from SCTS on Making Justice Work programme of reform and Shaping Scotland's Courts [Oral]

13. Craig McCorkindale gave an oral update on the Making Justice Work Programme. He advised that the merger of the Scottish Courts and Tribunals had gone well; the first Board meeting was today (11 May 2015); and an evaluation Report should be in the public domain in the next few months. In relation to the case management system, Kainos are carrying out the 'alpha' stage between now and July 2016 and expect to have worked up examples. They are continuing to have ongoing stakeholder engagement. Craig also advised that the consultation on the 2015 Fees Order would close on 15 May and the responses would then be analysed.

14. **Members discussed the case management system and noted that the ICTC Committee were being kept informed of its development.**

Item 4.3 – Business Tracker [Paper 4.3]

15. **Members noted the progress of work as outlined on the Business Tracker at Paper 4.3.**

Item 4.4 – Annual Report 2014/15 and Annual Programme 2015/16 [Papers 4.4 and 4.4A and B]

16. Members were invited to consider and approve the Annual Report 2014/15 (**Paper 4.4A**) and the Annual Programme 2015/16 (**Paper 4.4B**). They were advised that the Lord President had completed the foreword and the final versions would be circulated before publication. **Members approved the Annual Report and Annual Programme, subject to any minor amendment.**

Item 4.5 Stakeholder events [Oral]

17. Mandy Williams advised that the stakeholder event would take place on 2 July 2015 at 4pm in Parliament House. Mandy also outlined Secretariat proposals for the content of the event and asked for volunteers to speak to the Committee updates. Members were also advised that dates have still be agreed for the Autumn tour which will be at a more technical level looking for feedback from users. Organisations contact Secretariat to speak at conferences/CPD events and Members views were sought on whether they would wish to be involved in these events.

18. **Members noted the arrangements for the stakeholder event. They agreed that it was important for the Council and its Committees to raise their image and members wishing to volunteer to speak at the stakeholder event or to assist on the Autumn tour should liaise with Secretariat. Members also agreed that they were content for Secretariat to speak at conferences/CPD events on behalf of the Council if no members were available.**

Item 5: Rules Rewrite

Item 5.1 - Rules Rewrite: update [Oral and Paper 5.1]

19. **Kenny Htet-Khin** provided an oral update on the progress of the rules rewrite project. Members were advised that if the draft rules being considered at the meeting were approved they would require to be laid in June to meet the intended coming into force date of 22 September 2015. This would allow time for Parliamentary scrutiny and consideration by practitioners. Work is also progressing in relation to the simple procedure and the Sheriff Appeal Court (civil). The activity tracker [**Paper 5.1**] records the progress of matters being taken forward as part of the Rules Rewrite project.
20. **Members noted the oral update and the progress made as detailed in the activity tracker.**

Item 5.2 – Rules for Judicial Review Procedure [Papers 5.1 and 5.1A-B]

21. Paper 5.2 asked the SCJC to consider draft rules for changes to Judicial Review procedure. These had been developed by the Rules Rewrite Committee. **Kenny Htet-Khin** and **Luke McBratney** spoke to the detail of the instrument which replaces Chapter 58 of the Rules of the Court of Session with new procedural rules for judicial review.
22. **Members considered the draft rules at Paper 5.2B and indicated that they were content that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force on 22 September 2015.**

Item 5.3 – Rules for Exclusive Competence [Papers 5.3 and 5.3A-B]

23. Paper 5.3 asked the SCJC to consider draft rules in consequence of the reforms to the exclusive competence of the sheriff court. These had been developed by the Costs and Funding Committee (CAFC). **Graham Crombie** spoke to the detail of the instrument which inserts new Chapter 14B into the Rules of the Court of

Session to make provision about how to determine the value of an order for payment of money or determining rights in relation to property.

24. **Members considered the draft rules at Paper 5.3A and indicated that they were content that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force on 22 September 2015.**

Item 5.4 – Rules for all-Scotland Personal Injury Court [Papers 5.4 and 5.4A-B]

25. Paper 5.4 asked the SCJC to consider draft rules for establishing an all-Scotland specialist personal injury court. These had been developed by the Personal Injury Committee (PIC). **Stephen Feltham** spoke to the detail of the instrument which provides for the procedure and practice which will apply following the establishment of a specialist all-Scotland personal injury court with civil jury trials. The rules also provide for motions to be intimated and enrolled by email in the all-Scotland court and for active case management of certain personal injury cases, both in the all-Scotland court and in local sheriff courts. Members' views were also sought on transitional issues.

26. **Members considered the draft rules at Paper 5.4B and indicated that, prior to them being submitted to the Court of Session for consideration, they wished the amended rule 36.K1 OCR to be referred back to the PIC for further consideration. Following discussion, members also agreed that the suggested change to the transitional arrangements be made.**

Item 5.5 – Rules for transfer and remit of cases [Papers 5.5 and 5.5A-B]

27. **Paper 5.5** asked the SCJC to consider draft rules in relation to the transfer and remit of actions. These rules of court are required as a result of (i) the establishment of an all-Scotland personal injury sheriff court; and, (ii) new provisions in the 2014 Act dealing with the remit of cases to and from the Court of Session. **Stephen Feltham** spoke to the detail of the instrument.

28. **Members considered the draft rules at Paper 5.5A and indicated that they were content that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force on 22 September 2015.**

Item 5.6 – Rules for permission to appeal to the UK Supreme Court [Papers 5.6 and 5.6A]

29. **Paper 5.6** asked the SCJC to consider draft rules which allow for an appeal to the UK Supreme Court to be taken only with permission of the Inner House or UK Supreme Court. **Roddy Flinn** spoke to the detail of the instrument.

30. **Members considered the draft rules at Paper 5.6A and indicated that they were content that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force on 22 September 2015.**

31. **Members also acknowledged the significant amount of work that had gone into preparing the often complex draft rules and extended their thanks to the Rules Rewrite Drafting Team.**

Arising fee implications

32. **Kenny Htet-Khin** spoke to the arising fee implications from the new rules. He explained that given the timescales it is intended that the fee instruments be submitted directly to the SCJC and considered by correspondence.

Item 6: Secondary Legislation

Item 6.1 – Revenue Scotland and Tax Powers Act 2014 [Papers 6.1 and 6.1A-D]

33. **Paper 6.1** proposed amendments to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 in light of Section 225 of the Revenue Scotland and Tax Powers Act 2014, which provides for applications to the sheriff for summary warrant. **Roddy Flinn spoke to these papers.**

34. Members agreed that draft rules should be prepared and circulated for consideration by correspondence, with a view to being submitted to the Court of Session.

Item 7: A.O.C.B.

35. No other business was raised under this item.

Item 8: Date of next meeting

36. Members noted meeting dates for 2015 as provided on the agenda and that the next meeting would take place at 10.00am, Monday 06 July 2015.

Scottish Civil Justice Council Secretariat

May 2015