

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 12 MAY 2014

Members present: Lord Menzies (Deputy Chair)
Sheriff Abercrombie QC
Ian Dickson (Principal Legal Officer, SLAB)
Jan Marshall (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
Jane Macdonald, Policy and Legislation Branch, SCS

Secretariat: Kenny Htet-Khin, Head of Drafting Team
Ondine Tennant, Deputy Secretary
Carmen Murray, Policy Officer

Apologies: Lord President (Gill)
Lord Tyre
Sheriff Principal Stephen
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)

Item 1: Introduction, welcome and apologies

1. Lord Menzies informed members that he would be chairing the meeting in the Lord President's absence, welcomed those present and noted apologies. Members were advised that Jane MacDonald, Head of SCS Policy and Legislation branch, was attending in place of sheriff clerk representative Frances Macpherson to speak to the proposals in paper 3.1.
2. Members agreed not to publish the following papers: 2.2, 3.1, 4.4A, 4.5 and 4.6.

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.**
5. Members noted that there would be a seminar on drafting and the legislative process on Monday 16 June and agreed to advise the Secretariat of any topics that they would like to be covered on the day.
6. The Chairman advised members that the UK Supreme Court decision in *A v BBC (Scotland)* had been published on 8 May, dismissing the BBC's appeal. Members' attention was drawn to paragraph 68 of the judgment which made reference to the SCJC and its intention to amend the rules on reporting restrictions in Scotland. **Members noted the intention to prepare policy options for consideration at the June meeting.**
7. **Members noted that amendments to the insolvency rules (which were considered by correspondence after the Council's last meeting) were made on 1 May 2014.**

8. There was some discussion of the Scottish Government's Bar Reporter's Working Group. It was noted that progress was underway in this regard, with the Group scheduled to meet during the summer to develop guidance. **The SCJC would continue to monitor developments in this respect.**

Item 3: Proceedings

Item 3.1 – SCS Representation on Council and Committees [Paper 3.1]

9. Members considered **Paper 3.1** which sought approval for changes to the SCS nominees to the SCJC and its committees following a review of arrangements by the SCS.
10. **It was agreed that Jane MacDonald should attend SCJC meetings and that members of the SCS Policy and Legislation Branch be appointed to SCJC committees as observers, replacing the current sheriff clerk representatives.**
11. Members were strongly of the view that it would be important to ensure the operational perspective on the Council and its committees and **it was agreed that the arrangements should be reviewed after one year, with a view to ensuring the SCJC has the benefit of the operational perspective in respect of the implementation of new rules.**
12. **It was agreed that arrangements should be put in place to allow for private discussion where matters were tabled for discussion in the presence of non-members.**

Item 3.2 – RRWG remit and membership [Paper 3.2]

13. Following on from discussion at the last meeting of the Council, members considered a paper proposing to amend the remit of the Rules Rewrite Working Group (RRWG), rename it the Rules Rewrite Committee and to review its role and remit after 2 years.

14. **It was agreed that following the publication of its final report, the RRWG's remit should be extended as proposed in Paper 3.2, that it should be renamed the Rules Rewrite Committee and that its role and remit should be reviewed after a period of two years.**
15. Members discussed extending the membership in light of the proposed remit. In discussion, there were questions around whether dedicated consumer (in addition to non-legal) representation was required. It was generally felt that extending membership to cover all the potential matters that might fall within the Committee's remit to prepare 'miscellaneous' rule changes, might render it too large to be workable. The Secretariat was asked to develop proposals for consideration at the next meeting.

Item 4: Work programme

Item 4.1 – Update from the Scottish Government on legislative developments

16. Jan Marshall provided members with an update on progress in relation to the Courts Reform (Sc) Bill, Taylor Review, Bar Reporters, and implementation of the Marriage and Civil Partnership (Sc) Act 2014 and Tribunals (Sc) Act 2014. Members noted that the Justice Committee's Stage 1 report on the Courts Reform (Sc) Bill was published on Friday 09 May. **The Secretariat was asked to keep members advised of any matters arising during the Bill's progress, in particular as to the proposed amendments to the Court of Session's rule-making powers.**

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

Item 4.3 – Courts Reform (Sc) Bill Implementation

17. Items 4.2 and 4.3 were taken together. Craig McCorkindale delivered a presentation on the plans for implementation and provided members with an overview of the milestones for the MJW 1 Programme. Discussion focussed on matters of implementation, including transitional arrangements and phasing of

different aspects of implementation, particularly with regard to the Taylor recommendations. It was felt that communication of changes and plans for implementation to the wider public would be key going forward.

18. **Members agreed that it would be useful to have sight of data on current business levels and that this should be tabled for discussion at the next meeting. The Secretariat was asked to develop proposals for research priorities and the SCJC's data needs thereafter. It was remarked that it had been many years since any wide scale study into the experience of court users had been conducted.**
19. Kenny Htet-Khin provided members with an update on the Rules Rewrite Project and next steps, including the recruitment of a new drafting team and development of a process plan, detailing how the rules were to be instructed and providing for communication between committees.

Item 4.4 – Annual Report 2013/14 [Papers 4.4 and 4.4A]

20. **Members considered a draft Annual Report for 2013/14 [Paper 4.4A]. The draft report was approved and it was agreed that it should be published in May and laid before Parliament alongside the Annual Programme.**

Item 4.5 – Costs and Funding [Paper 4.5]

21. Duncan Murray provided members with an update on findings from the Civil Justice Council's recent conference on the Jackson reforms one year on, which he had attended with Lady Wise (Access to Justice Committee Chair), Sheriff Hughes (Costs and Funding Committee Member) and Neil Robertson (SCJC Policy Officer). Members discussed the implications of the English experience for Scotland and noted that implementation of the Taylor Review reforms would be closely linked with courts reform. It was considered that keeping up to date with the experience in England and Wales would be essential going forward.

Item 4.6– Business Tracker **[Paper 4.6]**

22. Ondine Tennant provided the Council with a short update on new items of business arising since the last meeting.
23. Eric Baijal provided an update on his recent attendance at the Law Society's Civil Justice Committee where he delivered a presentation on behalf of the SCJC.

Item 5: A.O.C.B

24. Following on from the discussions on item 4.3, it was agreed that a stakeholder event would provide a good opportunity to gain input on implementation of the new rules and/or gather data. **The Secretariat was instructed to develop proposals for consideration at the June meeting.**
25. A possible gap between costs incurred and costs recovered was mentioned as a potential access to justice issue. **The Secretariat was instructed to consider which committee would be best placed to consider the matter.**

Item 6: Dates of next meetings

26. **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, 30 June 2014.**

Scottish Civil Justice Council Secretariat

May 2014