

SCOTTISH CIVIL JUSTICE COUNCIL

PARLIAMENT HOUSE, MONDAY 16 NOVEMBER 2015

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

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present and noted apologies from Lord Tyre and Eric McQueen.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.1, 3.1A, 4.3, 4.5, 4.5A-B, 5.1, 5.2, 5.2A, 6.1, 6.1A-C, 7.1, 7.1A-C, 7.2 and 7.2, 7.2A and 7.2C.

Item 2: Previous Meeting

Item 2.1 - Minutes of previous meeting [Paper 2.1]

3. The following amendment, with changes in italics, to paragraph 30 of the minutes of the previous meeting had been proposed by the Secretariat to better reflect what had been said in discussion:

“30. Members also agreed that a small working group be established with a remit to consider *whether* the prescribed test and procedure *requires to be revised in order* to achieve compatibility with the Convention and Community Law, *and, if necessary, formulate proposals for changes to the rules.*”

4. **Members agreed the minutes from the previous meeting subject to this amendment being made.**

Item 2.2 - Progress of actions from previous meeting [Paper 2.2]

5. **Members noted the progress that had been made on actions since the last meeting.**

Item 2.3 – Items considered by correspondence [Paper 2.3]

6. **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:

Sheriff Appeal Court (civil) rules

Following the last meeting, the Council considered and approved a draft instrument in relation to rules for the new Sheriff Appeal Court (civil). The Rules were made by the Court of Session, subject to modification, on 21 October, laid on 23 October and come into force on 01 January 2016.

Item 3: Proceedings

Item 3.1 – Membership [Papers 3.1 and 3.1A]

7. At the previous meeting, members had approved an amendment to the Standing Orders formally incorporating provision for standing committee appointments for SLAB, SG and SCTS and including provision for the appointment of a nominated alternative. **Paper 3.1A** proposed some changes to the current members, and nominations for alternative representation, for SLAB, SG and SCTS. It also proposed that Craig McCorkindale be appointed as a paper member to the Access to Justice, Costs and Funding, Family Law, Personal Injury and Rules Rewrite Committees.
8. **Members approved the changes to standing appointments, nominations for alternative representation and the appointment of Craig McCorkindale as a paper member to the Access to Justice, Costs and Funding, Family Law, Personal Injury and Rules Rewrite Committees.**
9. **It was noted that Kenneth Forrest and Ronnie Conway had resigned from the Access to Justice Committee. Members noted their thanks for the contribution they had made to the work of the Access to Justice Committee.**

Item 4: Work programme

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

10. Kay McCorquodale provided members with an update on legislative developments in the Scottish Government. Stage 1 of the Community Justice (Scotland) Bill started on 1st September and the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill completed Stage 2 on 3rd November. Stage 3 will take place in December. Stage 3 of The Criminal Justice (Scotland) Bill will also take place in December. Stage 1 of the Land Reform (Scotland) Bill is due to be completed by 18th December. The Succession (Scotland) Bill has completed Stage 1 and the Scottish Government has recently consulted on further changes to succession law. A draft Time Bar Bill, on the removal of the three year limitation period for civil actions by survivors of historical child abuse, is due to be published in the Spring.

11. A package of courts reform orders has been laid and come into force on 1st January 2016 giving effect to the Sheriff Appeal Court (civil).

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

12. Craig McCorkindale provided members with an update on the Making Justice Work Programme. Work had recently focused on working up guidance on the Sheriff Appeal Court (civil) which comes into being on 1st January 2016. The ICMS project team have been demonstrating a prototype to court staff and judiciary in order to inform its further development with feedback from users. The prototype has been well received.

Item 4.3 – Business Tracker [Paper 4.3]

13. Members noted the progress of work as outlined on the Business Tracker.

Item 4.4 – Winter Tours [Oral]

14. Members had been emailed prior to the meeting to advise that, due to low uptake, the decision had been taken to cancel the sessions in Kilmarnock, Dumfries, Perth and Selkirk and that attendees had been offered places at alternative venues. Three events are now scheduled to take place in Aberdeen, Inverness and Glasgow.

15. Thanks were recorded to those members who had volunteered to speak at Winter Tour events and it was noted that the success of the tours would be reviewed after they had taken place.

Item 4.5 – Communications [Papers 4.5 and 4.5A-B]

16. The Communications Strategy for the Council was adopted in September 2013 and incorporated a Communications Plan. Following ongoing discussions around the communications activity of the Council the Strategy has been reviewed and Paper 4.5 recommended some changes. It was also proposed that an SCJC newsletter be produced providing regular updates on the work of the Council and its committees, for publication on the website and for sharing with interested stakeholders.

17. **Members agreed the changes to the Communications Strategy and that an SCJC newsletter should be produced.**

Item 5: Rules Rewrite

Item 5.1 – Update from Rules Rewrite Drafting Team [Oral and Paper 5.1]

18. Kenny Htet-Khin provided an update on the Rules Rewrite Project. The Sheriff Appeal Court (Civil) rules come into force on 1st January 2016 and there will be a consequential instrument being circulated to members shortly. The Rules Rewrite team are working on a ‘sweep up’ of the remaining rules required by the Courts Reform (Scotland) 2014 Act and rules to put in place recommendations of the Gill Review that do not require enabling legislation.

19. **Members noted the oral update and that provided on the activity tracker Paper 5.1.**

Item 5.2 – Simple Procedure Rules [Papers 5.2 and 5.2A]

20. **Members considered the draft consultation paper about the core Simple Procedure Rules and agreed that it should be issued for consultation, subject to some minor amendments to the drafting and to provide greater clarity for consultees as to the Scottish Government’s position on expenses for Simple Procedure.**
21. **Members noted that the rules should be reviewed after a period of operation and it was agreed that the rules should be reviewed after they have been in use for at least 18 months.**

Item 6: Research and consultations

Item 6.1 – Protective Expenses Orders [Papers 6.1 & 6.1A-D]

22. **John Thomson** spoke to these papers. Members were asked to consider, and give their views on, the draft rules at **Paper 6.1A** proposing amendments to Chapter 58A of the Rules of the Court of Session, which provides for protective expenses orders. **Members were content with the draft rules.**

23. As a distinct issue, members had decided at the previous meeting that a small working group should be set up to consider the test and procedure regulating applications under Chapter 58A. Lord Malcolm was asked to lead this group and has drafted a short paper setting out the key issues.
24. **It was agreed that Lord Malcolm should be asked to include consideration of the interaction of PEOs and legal aid when reviewing the prescribed test and procedure.**
25. **Members agreed that Lord Malcolm should take forward the consideration of the prescribed test and procedure acting alone rather than by leading a working group. It was agreed that key stakeholders would be asked to consider the paper that he has prepared and that there would be a report to the Council on the result of those consultations.**

Item 7: Secondary Legislation

Item 7.1 – Enterprise Act 2002 [Papers 7.1 & 7.1A-C]

26. The Council considered the draft rules at Paper 7.1A which make provision for an expanded category of case to be subject to transfer from the Court of Session and the sheriff court to the Competition Appeal Tribunal.
27. **Members considered the draft rules and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 7.2 – Criminal Procedure (Scotland) Act 1995 [Papers 7.2 & 7.2A-C]

28. The Council considered the draft rules at Paper 7.2A which insert provision into the Child Care and Maintenance Rules for appeals to the sheriff against a local authority's decision to place a child in secure accommodation.
29. There was discussion relating to the issuing of a note of reasons by sheriffs and whether these, or other, rules of court should be amended in relation to this matter. It was agreed that no amendment was required.

30. It was noted that although these were rules relating to criminal legislation they were correctly being considered by the Council as they apply to an appeal against the decision of a Local Authority and not the decision of a criminal court.

31. Members considered the draft rules and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.

Item 8: A.O.C.B

32. The Chair noted that an increase in Judicial Review of administrative action might be anticipated in the next five to ten years and that the possibility of setting up an Administrative Division of the Outer House to deal with it was under consideration.

Item 9: Dates of Next Meetings

33. Members noted the dates of the next meetings:

- 10.00am, Monday 25th January 2016
- 10.00am, Monday 14th March 2016
- 10.00am, Monday 16th May 2016
- 10.00am, Monday 11th July 2016
- 10.00am, Monday 3rd October 2016
- 10.00am, Monday 21st November 2016

**Scottish Civil Justice Council Secretariat
December 2015**