

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**  
**MONDAY 18 MARCH 2019 AT 10.30 AM**  
**JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

**MINUTES**

- Members Present:** Lord President (Chair)  
Sheriff Principal Abercrombie QC  
Lord Boyd of Duncansby  
Lynda Brabender QC (Advocate)  
Joel Conn (Solicitor)  
Employment Judge Joseph d’Inverno (LP member)  
Elena Fry (Solicitor)  
Jaqueline Harris (Solicitor)  
Gavin Henderson (Scottish Government)  
Sheriff Hughes  
Colin Lancaster (Scottish Legal Aid Board)  
Eric McQueen (SCTS)  
Brandon Malone (LP member)  
Ian Maxwell (Consumer representative)  
Lord Menzies  
Jane Williams (Consumer representative)
- In attendance:** Nicola Anderson (SCTS, Legislation Implementation Team)  
Diane Machin (SCTS, Deputy Principal Clerk of Session)  
Cameron Stewart (SCTS, Director of Development & Innovation)
- Support:** Andrea Campbell (Secretariat Business Manager, Scottish Civil Justice Council)  
Andrew Campbell (Deputy Legal Secretary, Lord President’s Private Office)  
Steven D’Arcy (Deputy Secretary to the Scottish Civil Justice Council)  
Roddy Flinn (Secretary to the Scottish Civil Justice Council)  
Karen Stewart (Policy Manager, Scottish Civil Justice Council)  
Kelly Jack (Policy Officer, Scottish Civil Justice Council)
- Apologies:** Kenneth Campbell QC (Advocate)  
Sheriff Murphy  
Lord Tyre

## **Item 1: Welcome, apologies and agreement of private papers**

1. The Chairman welcomed those present and noted apologies from Kenneth Campbell QC, Sheriff Murphy and Lord Tyre.
2. The Chair welcomed Cameron Stewart to his first meeting. Cameron has recently taken up post as the SCTS Director of Development & Innovation with a focus on civil law matters.

## **Item 2: Previous meeting**

### *Item 2.1 – Minutes of previous meeting (Paper 2.1)*

3. **The Council approved the minutes of the previous meeting.**

### *Item 2.2 – Activity since last meeting (Paper 2.2)*

4. **The Council noted the progress that had been made on actions since the last meeting and the activity report on the work of the Council's Committees.**

### *Item 2.3 – Items by correspondence (Paper 2.3)*

5. **The Council noted Paper 2.3**, which provided a summary of the outcome of the following matters raised by correspondence since the last meeting:

- a) **Modernisation of insolvency**

**Paper 2019/02** was issued on 26 February 2019, inviting members to approve the draft rules and to agree that they should be submitted to the Court of Session and that no policy note will be required on submission to Parliament.

**Responses were invited by 4 March 2019. No substantive responses were received. The rules were approved by Council and the statutory instrument was laid in Parliament on 8 March 2019 with a coming into force date of 6 April 2019.**

- b) **Brussels I Recast Regulation**

**Paper 2019/04** was issued to members on 26 February 2019, inviting members to approve the draft rules and to agree that they should be submitted to the Court of Session and that no policy note is required on submission to Parliament.

**Responses were invited by 7 March 2019. No substantive responses were received. The rules were approved by Council and the statutory instrument was laid in Parliament on 13 March 2019 with a coming into force date of 28 March 2019.**

### **Item 3: Proceedings**

#### *Item 3.1 – Council membership (Paper 3.1)*

**6. The Council considered paper 3.1 and noted:**

- a) **the reappointment of Joel Conn to Council for a further period of 3 years and that his term on the Rules Rewrite and Access to Justice Committees will run concurrently with his Council appointment; and**
- b) **the appointment of Cameron Stewart, SCTS Director of Development and Innovation, to replace Craig McCorkindale as the nominated SCTS observer on Council with immediate effect.**

### **Item 4: Work Programme**

#### *Item 4.1 – Update from the Scottish Government on legislative developments (Oral)*

- 7. Gavin Henderson provided members with an update on legislative developments in the Scottish Government. The Damages (Investment Returns and Periodical Payments) (Scotland) Bill completed Stage 2 on 22 January 2019, Parliament debating Stage 3 on 19 March 2019. The Family Law (Scotland) Bill will be introduced early September 2019. The Children (Equal Protection from Assault) (Scotland) Bill is at Stage 1 of its parliamentary process and is to be completed by 31 May 2019.
- 8. The Scottish Government will announce The Programme for Government 2019-20 in September 2019.
- 9. Consultations are ongoing in relation to the law of succession, closing 10 May 2019, and the law on defamation, closing 5 April 2019. On 19 March 2019, the Justice Committee will consider the Scottish Government's commitment to uplift legal aid rates by 3%.
- 10. The Scottish Government continues to plan for Brexit with all Scottish Statutory Instruments now laid.
- 11. **The Council noted this update.**

*Item 4.2 – Business Tracker (Paper 4.2)*

12. There was discussion in respect of the transfer of tribunal rule making powers to the Scottish Civil Justice Council (SCJC). Due to the significant amount of policy development required, in respect of new rules, for those tribunals that were still to transfer into Scottish Tribunals, the Scottish Government would retain the rule function for the foreseeable future.
13. **The Council noted the other items listed in Paper 4.2, which provide an update on the work currently being considered by the Council and its Committees.**

*Item 4.3 – Priorities for 2019/2020 (Papers 4.3, 4.3A)*

14. **Paper 4.2**, invited members:

- (i) to consider and approve priorities for 2019/2020 for inclusion in the Annual Report and Programme;
- (ii) to agree, due to the substantial amount of ongoing commitments, that a strategy day or meeting is not held until the Autumn of 2019;
- (iii) to agree a change to the number of Council meetings per year;
- (iv) to agree that committee meetings are only scheduled where work is sufficiently progressed for a committee to consider or where there are legislative developments that require input; and
- (v) to agree, in principle, that the remit of the ICT Committee is refreshed so that it has a particular focus on digital reform of the civil justice system.

15. In discussion the following points were made:

- The Secretariat should consider whether work in respect of compulsory pre action protocols, relating to industrial disease claims, could be made a higher priority.
- Once the review of simple procedure was complete, work on simple procedure special claims rules might be taken forward. The Secretariat agreed to check and confirm the position.
- Work in respect of simplified divorce proceedings, which was not on the main priority list, from the Council's perspective, was complete. A draft order had been prepared. The Scottish Government had previously committed to running a consultation. This was still to be done. It was agreed that the Lord President would write to the Minister for Community Safety and Legal Affairs

to establish whether the Scottish Government could take forward a consultation at the earliest opportunity.

- Digital Modernisation should be a key focus for the Council in the coming years.
- The Secretariat had restructured, splitting the functions of the team between policy development activity and general administration.

**16. The Council agreed:**

- **that the priority work for 2019/20 was approved. This was subject to clarification on whether work on the compulsory pre action protocol for industrial disease can be given a higher priority; and that simple procedure, special rules will follow directly after work on reviewing simple procedure;**
- **that the remit of the ICT Committee is refreshed so that it has a particular focus on digital reform of the civil justice system;**
- **that digital reform of the civil justice system should be a key focus for Council in the coming years. As such, this should be reflected in the Annual Report and Programme and as a focus on its strategy day or meeting in the Autumn;**
- **to a reduction in number of SCJC Council meetings from 6 to 4 and that dates for committee meetings are aligned with the agreed priorities;**
- **that the agenda for future Council meetings should leave more time for discussions on keeping the civil justice system under review. Papers seeking Council's approval to technical amendments court Rules would be dealt with via correspondence;**
- **that the secretariat should consider IT products that would allow for secure communication between members, should discussion on draft rules be required;**
- **that the Council should host a strategy day in the Autumn of 2019; and**
- **that a news release should be prepared announcing the Council's priority work for the coming year.**

**Item 5: Justice system reform: Courts Reform**

*Item 5.1 – Courts Reform Tracker (Paper 5.1)*

17. The Council noted Paper 5.1, which provided an update on the work being progressed by the Council under the Courts Reform agenda.

**Item 6: Proposals for rules: policy development**

*Item 6.1 – Request for Court Rules: Criminal Finances Act 2017 (Papers 6.1 and 6.1A-C)*

18. The Council considered the draft rules at **Paper 6.1A**, which make rule changes necessary to implement the provisions of the Criminal Finances Act 2017 to provide new and amended rules for handling applications to the court.

**19. The Council:**

- **Approved the draft rules in Paper 6.1A for submission to the Court of Session for approval, subject to any stylistic or typographical changes; and**
- **Agreed that no policy note was required to accompany this draft rule.**

*Item 6.2 – Simple Procedure Amendment – Civil Online (Papers 6.2 and 6.2A)*

20. The Council considered the draft rules at **Paper 6.2A**, which make rule changes to Simple Procedure forms.

**21. The Council:**

- **Approved the draft rules in Paper 6.2A for submission to the Court of Session for approval, subject to any stylistic or typographical changes; and**
- **Agreed that no policy note was required to accompany this draft rule.**

**Item 9: AOCB**

*Item 9.1 SCTS Update (Oral)*

22. Eric McQueen updated the Council on developments within SCTS and in particular the ICMS online case management system.

23. An upgrade was released in December 2018, four months ahead of schedule, allowing court users to access court documents through Civil Online, with automatic notification, rather than receiving new documents by post. Since the December release there have been over 4,000 simple procedure cases registered, of which 54% of claimants and 33% of respondents have opted for online notification. Over 700 legal firms and organisations have now registered for Civil Online.

24. Mr McQueen confirmed the second phase of Civil Online, launching on 25 April 2019, signals the beginning of digital files for Simple Procedure cases. Civil Online will allow solicitors and members of the public complete an online claim form, pay court fees, lodge documents and defend cases.

**25. The Council approved the following papers for publication:**

- **Paper 2.2 Activity since last meeting**
- **Paper 2.3 Items by correspondence; 2019/02, 2019/04**
- **Paper 3.1 Council membership**
- **Paper 6.1A Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Proceeds of Crime) 2019**
- **Paper 6.2A Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2019**

26. No other business was raised.

#### **Item 10: Dates of future meetings**

27. The dates of future meetings were noted:

- Monday 13th May 2019
- Monday 23rd September 2019
- Monday 18th November 2019
- Monday 17th February 2020

**Scottish Civil Justice Council Secretariat  
March 2019**

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