

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 18 NOVEMBER 2013

- Members present:** Lord Menzies (Deputy Chair)
Lord Tyre
Sheriff Principal Stephen
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)
Jan Marshall (Scottish Government)
James Wolffe QC (Advocate)
Sarah Wolffe QC (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
Cameron Stewart, SG Justice Directorate
- Secretariat:** Roddy Flinn, Secretary
Ondine Tennant, Deputy Secretary
Chris Nicholson, Legal Secretary
Lisa Gamble, Policy Officer
- Apologies:** Lord President (Gill)
Sheriff Abercrombie QC

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 Cameron Stewart, SG Justice Directorate, and noted apologies.
2. Members agreed not to publish the following papers: 2.2, 3.1, 5.1A, 5.2A, 6.1B, 6.1D, 7.1, 7.1A and 7.1B.

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. With regard to action point 10, it was noted that the Chair had received a response from the Master of the Rolls indicating his support for engagement between the Council and its equivalent bodies England and Wales and that the Secretariat would be taking forward arrangements in that regard in due course.
5. **Members noted the progress since the last meeting and actions to be carried forward to future meetings.**

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

6. Members considered updates on activity which had taken place since the last meeting.
7. The Chair provided an oral update on the Rules Rewrite Working Group's (RRWG), which had met on 7 November 2013, noting the following.
 - 7.1. The Group has continued to conduct research into the experience of other jurisdictions in relation to rules revision projects and has arranged a visit to England and Wales in this regard.
 - 7.2. The Group has considered the priority areas, identified through the Making Justice Work Programme, for implementation of civil courts reform as: the

increase to the privative limit; the introduction of summary sheriffs and the simple procedure; the creation of the Sheriff Appeal Court; and the creation of a specialist PI court with civil jury trials. The Group has asked that detailed discussions be held with the Scottish Government and SCS as to the implementation timetable in order that the rules programme can be developed by spring 2014.

7.3. The Group has given consideration as to whether a unitary set of rules across the civil courts should be adopted and its initial view is that separate rules should be retained.

7.4. Consideration has also been given to the role of Practice Directions. The Group has agreed that these have an important role in facilitating successful rule changes but that thought should be given as to how consistency might be ensured across the Sheriffdoms as well as where Practice Directions sit within the context of the overall style of the new rules.

7.5. Prof. Frances Wasoff had been asked to participate in the Group.

8. Members noted the activity since the last meeting, the activity reports of the Family Law Committee and RRWG and that Prof. Wasoff was to be formally appointed as a RRWG member.

Item 3: Proceedings

Item 3.1 – Family Law Committee Membership [Paper 3.1]

9. Members noted the resignation of Gavin MacColl from the FLC and approved the appointment of Lynda Brabender, a member of the Faculty of Advocates Family Law Group, as his replacement.

10. There was some discussion of the process for appointing members to committees. It was noted that proposals were made by the Chair, with the support of the Secretariat, and were drawn from a range of sources, including expressions of interest and proposals by committee or Council members.

Item 4: Forward Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments

11. Jan Marshall gave an update on progress in relation to the Bankruptcy and Debt Advice, Tribunals, Damages, Conclusion of Contracts and Victims and Witnesses Bills. Ms Marshall also explained that the Scottish Government was giving consideration to the Report of Sheriff Principal Taylor’s Review in conjunction with the Secretariat, SCS and others, in order to establish what might be required in terms of legislation in relation to any implementation of its recommendations.

Item 4.2 - Courts Reform (Sc) Bill - Presentation from Scottish Government

12. Cameron Stewart delivered a presentation on the Courts Reform (Sc) Bill, giving an update on consideration of the responses to the consultation Bill and confirming that it was intended to introduce the Bill to the Scottish Parliament in early 2014 with a view to implementation beginning mid-2015.

Item 4.3 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland’s Courts

13. Craig McCorkindale provided an update on the Making Justice Work Programme, highlighting the ongoing work in relation to the Courts Reform Bill and its implementation, and also of the plans surrounding the merger of the SCS and the Scottish Tribunals Service.
14. There was some discussion following these updates, in particular with regard to the timescales for particular initiatives. **The Secretariat was asked to prepare a timetable of upcoming consultations, parliamentary consideration of legislation and other initiatives of relevance to the Council’s work for forward planning purposes.**

Item 5: Communications and engagement

Item 5.1 - Communications Strategy [Papers 5.1 and 5.1A]

15. Members considered the draft Communications Strategy which had been revised following the Council's last meeting. It was felt that some clarification was required in relation to the duties on members receiving enquiries from the press in their capacity as Council members.
16. **Subject to these amendments and a minor correction, members adopted the Communications Strategy and agreed that it should be kept under review by the Secretariat and resubmitted to the Council as necessary.**

Item 5.2 – Core Briefing [Papers 5.2 and 5.2A]

17. The Council discussed the Core Briefing [Paper 5.2A] to be used by members who, when attending events, may be positioned to speak about the work of the Council. **It was thought that a template Powerpoint presentation would be a useful accompaniment to the Core Briefing and the Secretariat was asked to develop and circulate a copy to members. The core briefing was adopted and the Secretariat was asked to update and circulate the document as necessary, making any revisions clear.**

Item 6: Committee structure and associated groups

Item 6.1 - Costs and Funding Committee [Papers 6.1 and 6.1A-D]

18. Members considered proposals for a Costs and Funding Committee, with discussion focussing on how it should interact with the Lord President's Advisory Committee on Solicitor's Fees (LPAC).
19. It was considered that as a body of the Council, with its overarching remit to consider the 'civil justice system', the Committee should consider the question of fees. **It was therefore agreed that the Committee's remit should be revised to the effect that it should be able to consider Sheriff Principal Taylor's recommendations in their entirety, consulting LPAC as appropriate. It was**

also considered that the membership should include a serving Sheriff and an insurance industry representative. It was agreed that amendments to the remit and membership should be completed by correspondence in order that the Committee's establishment would not be delayed.

Item 7: Secondary Legislation

Item 7.1 - Reporting Restrictions [Papers 7.1 and 7.1A-D]

20. Members considered a draft analysis of the responses to the reporting restrictions consultation and draft commentary on the issues raised. **It was agreed that the consultation analysis should be published and accompanied by a statement indicating that the Council would suspend its consideration the matter until the UK Supreme Court's decision in Application of BBC Scotland re A v Secretary of State for the Home Department [2013] CSIH 43 is known.**

Item 7.2 – Accompanying Documents [Paper 7.2]

21. Roddy Flinn spoke to Paper 7.2, which provided an explanation as to the documents which may accompany subordinate legislation following discussions after the Council's last meeting with regard to explanatory notes.

22. It was felt that the provision of policy notes with civil procedure rules, where appropriate, would be a positive step. It was noted that there was an inaccuracy in Paper 7.2 with regard to policy notes, which are on occasion referred to in court proceedings as an aid to understanding the policy intention behind subordinate legislation. **While the Council was minded to adopt the practice of accompanying policy notes, it was agreed that the Criminal Courts Rules Council's attention should be drawn to the matter before taking a final decision.**

Item 8: A.O.C.B

23. There was no other business raised for discussion.

24. Members were reminded that the next meeting of the Council will take place at
10.00am, 13 January 2014.

Scottish Civil Justice Council Secretariat

November 2013