

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 19 NOVEMBER 2018 AT 10.30 AM
JUDGES' CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES**

Members Present: Lord President (Chair)
Sheriff Principal Abercrombie QC
Lord Boyd
Lynda Brabender QC (Advocate)
Kenneth Campbell QC (Advocate)
Joel Conn (Solicitor)
Employment Judge Joseph d'Inverno (LP member)
Elena Fry (Solicitor)
Jacqueline Harris (Solicitor)
Gavin Henderson (Scottish Government)
Colin Lancaster (Scottish Legal Aid Board)
Brandon Malone (LP member)
Ian Maxwell (Consumer representative)
Craig McCorkindale (SCTS)
Eric McQueen (SCTS)
Lord Menzies
Lord Tyre
Jane Williams (Consumer representative)

In attendance: Nicola Anderson (SCTS)
Diane Machin (SCTS)
John Thomson, (Scottish Government)

Support: Roddy Flinn (Secretary, Scottish Civil Justice Council)
Kelly Jack (Policy Officer, Scottish Civil Justice Council)
Lauren Keillor (Policy Officer, Scottish Civil Justice Council)
Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)

Apologies: Sheriff Hughes
Sheriff Murphy QC

Item 1: Introduction, welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Hughes and Sheriff Murphy. The Chair noted that John Thomson, formerly of the Lord President's Private Office, had kindly arranged to attend the meeting to speak to item 5.3.
2. The Chair welcomed Kelly Jack to her first meeting. Kelly has recently taken up post in the Scottish Civil Justice Council Secretariat.

Item 2: Previous meeting

Item 2.1 – Activity since last update (Paper 2.1)

3. **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 2.2 – Items by correspondence (Paper 2.2)

4. **The Council noted Paper 2.2, which provided a summary of the outcome of the following three matters considered by correspondence since the last meeting:**

Jury precepts

- **Paper 2018/13** was issued to members on 19 July 2018, inviting members to consider and approve draft rules which had been developed by the Rules Rewrite Committee. These make amendments to the Rules of the Court of Session in relation to the issuing of civil jury precepts. This followed a rules request from SCTS.
- **Responses had been invited by close of business on 02 August 2018, with a nil response indicating consent. Five responses were received, all approving the rules. The rules were made on 05 September and came into force on 21 September 2018.**

SCJC Admin Matters

- **Paper 2018/16** was issued on 07 September 2018, inviting members to approve the minutes of the previous meeting on 09 July 2018 and note relevant business updates.
- **Responses had been invited by close of business on 14 September 2018, with a nil response indicating consent. Two responses were received, approving the minutes. The minutes were subsequently published on the SCJC website.**

Simple Procedure Review Update and Consultation Report

- **Paper 2018/17**, which was issued on 02 October 2018, provided members with an update from the Access to Justice Committee on progress of the review of the Simple Procedure Rules. Members were invited to approve a summary of the consultation responses for publication.
- **Responses had been invited by close of business on 12 October 2018, with a nil response indicating consent. Six responses were received, approving the summary. The report was published on the SCJC website on 6 November 2018.**

Item 3: Proceedings

Item 3.1: Committee membership (Paper 3.1)

5. The Council considered **Paper 3.1**, which invited members to consider and approve changes to the membership of the Costs and Funding Committee and the Family Law Committee.
6. **The Council approved:**
 - **The re-appointment of Stewart Mullan to the Costs and Funding Committee for a further period of 3 years from 25 January 2019; and**
 - **The appointment of Sheriff Principal Pyle to the Family Law Committee.**

Item 4: Work Programme

Item 4.1: Update from the Scottish Government on legislative developments (Oral)

7. Gavin Henderson provided the Council with an update on the Scottish Government; legislative developments. The Prescription (Scotland) Bill had completed its parliamentary passage and was awaiting royal assent. The Damages (Investment Returns and Periodical Payments) (Scotland) Bill and the Children (Equal Protection from Assault) Bill are at stage 1. A Family Law Bill is due to be introduced by the Scottish Government by June 2019.
8. Gavin advised that Esther Robertson had published her independent review of the regulation of legal services. The Scottish Government continues to plan for Brexit.
9. **The Council noted this update.**

Item 4.2: Update from the SCTS (Oral)

10. Craig McCorkindale provided the Council with an update from SCTS. Work to enhance the Civil Online case tracker system is ongoing. Phase 2 of Civil Online, which will allow for online case submission, is on track to launch in early 2019. Development work to extend the Integrated Case Management System for the Court of Session is ongoing.
11. **The Council noted this update.**

Item 4.3 – Business Tracker (Paper 4.3)

12. **The Council noted Paper 4.3, which provided an update on the work currently being considered by the Council and its Committees.**

Item 5: Justice System Reform - courts reform

Item 5.1 – Courts Reform Tracker (Paper 5.1)

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

Item 5.2 – Rules Rewrite Project Update (Paper 5.2)

14. **The Council noted Paper 5.2, which provided a written update on the progress of the Rules Rewrite Project working groups.**

15. The procedural narratives from work streams 1 and 2 are near completion, with the narratives from work streams 3 and 4 approved by the relevant working groups.
16. Work in relation to work stream 5 is ongoing. The procedural narratives of work streams 1 to 4 will be collated and submitted for consideration by the Rules Rewrite Committee in due course.

Item 5.3 – Taxation Rules and Taxation procedure (Paper 5.3 – 5.3A-B)

17. The Council considered **Papers 5.3 and 5.3A-B**, which invited the Council to consider two draft Acts of Sederunt: a draft *Act of Sederunt (Taxation of Judicial Expenses Rules) 2019*; and a draft *Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019*. John Thomson spoke to this item.
18. The instruments were drafted following consideration by the Costs and Funding Committee. They were approved at a Committee meeting on 5 November 2018. The draft rules recast the provisions for the taxation of accounts of expenses and take account of recommendations in Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland. The draft rules reframe the tables of fees to provide for unit-based charging.
19. **The Council considered and discussed the draft instruments. Members agreed that the draft rules in Paper 5.3B should be amended to make it permissible, in the Sheriff court and Sheriff Appeal Court, for a party to seek an extension to the usual period for lodging an account of expenses in advance of the deadline for lodging.**
20. **Subject to the amendments detailed above, the Council:**
 - **Approved the draft rules at Papers 5.3A and 5.3B for submission to the Court of Session, subject to any stylistic or typographical amendment; and**
 - **Instructed a policy note to be prepared to accompany these rules.**
21. **The Council agreed that the rules permitting an extension period for lodging an account of expenses in advance should be reviewed approximately 12-18 after commencement to consider their operation in**

practice.

Item 6: Proposals for rules: implementation of legislation

Item 6.1 – Child Support Rules 1993: Passport Disqualification Orders (Papers 6.1 and 6.1A-C)

22. The Council considered **Paper 6.1**, which invited members to consider a policy proposal from the Office of the Advocate General and the Department for Work and Pensions to amend the Act of Sederunt (Child Support Rules) 1993 in order to implement Section 27 of Child Maintenance and Other Payments Act 2008. Section 27 provides for an additional sanction against persons who fail to make child maintenance payments; the power to disqualify such persons from holding or obtaining a UK passport.
23. The Family Law Committee had considered these proposals and developed draft rules which made procedural provisions for applications to the sheriff to disqualify a non-resident parent from holding or obtaining a UK passport if he or she fails to pay child support maintenance; and consequential amendments to the existing form of order for the disqualification from holding or obtaining a driving licence.
24. **The Council:**
 - **Approved the draft rules for submission to the Court of Session for approval, subject to any typographical or stylistic changes; and**
 - **Agreed that no policy note was required for these draft rules.**

Item 6.2 – Sanctions and Anti-Money Laundering Act 2018 (Papers 6.2 and 6.2A-C)

25. The Council considered **Paper 6.2**, which invited members to consider a policy proposal from the Foreign and Commonwealth Office which sought new rules of court in order to implement the Sanctions and Anti-Money Laundering Act 2018 (“the Act”).
26. The Act provides that various decisions made under Part 1 of the Act are open to challenge. An appropriate person may apply to the Court of Session to have a decision set aside. Section 40 of the Act makes specific provision in relation to the rules of court and applies sections 66 to 68 of the Counter-Terrorism Act 2008 to proceedings on an application under section 38 of the Act (court review of decisions). Rules for handling applications under the 2008 Act are set out in

Chapter 96 of the Rules of the Court of Session. The FCO suggests that similar rules should be prepared for applications under the 2018 Act.

27. The Act also largely repeals Part 1 of the Terrorist Asset-Freezing etc. Act 2010. The Council noted that Chapter 101 of RCS makes provision for handling applications under the 2010 Act and should therefore be revoked.

28. **The Council:**

- **Instructed the preparation of draft rules for handling applications under Section 38 of the 2018 Act, which should be similar to those in Chapter 96 RCS and are to incorporate provisions for the non-disclosure of sensitive material; and**
- **Agreed that Chapter 101 of the RCS should be revoked, subject to an appropriate savings clause.**

Item 6.3 – Brexit: The Effect of Brexit on Rules of Court (Paper 6.3)

29. **The Council noted Paper 6.3, which provided members with an update on the potential effect of Brexit on rules of court and the response planning by the Lord President's Private Office**

Item 7: AOCB

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

- **Paper 2.2; 2018/13, 2018/16, 2018/17,**
- **Paper 3.1**
- **Paper 6.1C**
- **Paper 6.2C**

31. **SCTS agreed that Paper 2018/13B be published.**

32. No other business was raised.

Item 8: Dates of future meetings

33. The dates of future meetings were noted:

- Monday 21 January 2019 at 10.30 am
- Monday 18 March 2019 at 10.30 am
- Monday 13 May 2019 at 10.30 am
- Monday 08 July 2019 at 10.30 am
- Monday 09 September 2019 at 10.30 am
- Monday 18 November 2019 at 10.30 am

**Scottish Civil Justice Council Secretariat
November 2018**