

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 2 OCTOBER 2017 AT 10 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES

Members Present: Lord Menzies (Deputy Chair)
Eric McQueen (Chief Executive, SCTS)
Colin Lancaster (Chief Executive, SLAB)
Jan Marshall (Scottish Ministers' representative)
Lord Tyre
Sheriff Hughes
Lynda Brabender (Advocate)
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Ian Maxwell (Consumer representative)
Jane Williams (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Brandon Malone (LP member)

In attendance: Diane Machin (Deputy Principal Clerk of Session, SCTS)
Jane MacDonald (SCTS Legislation Implementation Team)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Support: Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)
John Thomson (Deputy Legal Secretary, Lord President's Private Office)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Lauren Gibb (Policy Officer, Scottish Civil Justice Council)
Andrea Campbell (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord President
Lord Boyd of Duncansby
Sheriff Principal Abercrombie QC
Sheriff Murphy QC
Kenneth Campbell QC (Advocate)
Paul Reid (Solicitor)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present, in particular, Diane Machin, who was attending her first meeting, and noted apologies from the Lord President, Lord Boyd, Sheriff Principal Abercrombie QC, Sheriff Murphy QC, Kenneth Campbell QC and Paul Reid.

2. **Following on from discussions at the last meeting, members agreed to consider the publication of papers at the end of meeting.**

Item 2: Previous meeting

Item 2.1 – Activity since last update (Paper 2.1)

3. **Members 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. **Members noted Paper 2.2** which provided a summary of the outcome of consideration given to the following four matters raised by correspondence since the last meeting.

A. Corrective instrument for Human Trafficking Orders

- **Paper 2017/15** was issued to members on 03 July 2017, inviting the Council to consider and approve draft rules at **Paper 2017/15A** correcting an oversight in the Act of Sederunt (Summary Application Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017 No. 211 in relation to the mutual recognition of interim orders.
- **Responses were invited by close of business on Friday 07 July 2017. Three responses were received, all approving the draft rules.**
- **The instrument was made on 11 July 2017 and came into force on 18 September 2017.**

B. Administrative Council matters

- **Paper 2017/13** was issued to members on 10 July 2017, inviting the Council to consider a number of administrative matters that would be more suitably dealt with by correspondence than await the next Council meeting on 02 October 2017. In particular members were invited to:

- approve the minutes of the previous meeting held on 29 May 2017 (produced at **Paper 2017/13A**);
 - note the progress of actions and business updates provided in the Activity Update (produced at **Paper 2017/13B**); and
 - approve the appointment of Walter Drummond-Murray to the Rules Rewrite Committee.
- **Responses were invited by close of business on Monday 17 July 2017. One response was received, confirming approval.**
 - **The approved minutes of the previous meeting held on 29 May 2017 were published on the Council's website on 18 July 2017.**
 - **Walter Drummond-Murray's appointment to the Rules Rewrite Committee was confirmed to take effect from 18 July 2017.**

C. Implementation date for Simple Procedure Special Claims Rules

- **Paper 2017/17** was issued to members on 28 August 2017 inviting members to note the decision made by the Making Justice Work Programme Board to defer the commencement date for the coming into force of the Simple Procedure Special Claims Rules.

D. Working Group arrangements

- **Paper 2017/18** was issued to members on 06 September 2017, inviting members to approve additional arrangements for working groups of the Council. In particular members were invited to approve:
 - the appointment of Nicola Marchant to the working group taking forward the work under work stream 1 of the Rules Rewrite Project;
 - the appointment of Tracy Kell to the working group taking forward the work under work stream 3 of the Rules Rewrite Project; and
 - the appointment of Ian Maxwell and Chrissie Stark to the working group taking forward the work under work stream 4 of the Rules Rewrite Project;
 - the establishment of a working group to make recommendations for revised rules for Protective Expenses Orders (PEO) with Lord Malcolm as Chair; and

- the following membership appointments to the PEO working group:
 - Joel Conn, SCJC member
 - a representative from the Faculty of Advocates
 - a representative from the Scottish Government
 - a representative from an Environmental Group
 - a member from the Offices of the Court of Session.
- **Responses were invited by close of business on Wednesday 13 September 2017. Three responses were received, all approving the arrangements.**

Item 3: Proceedings

Item 3.1 – Committee Membership (Paper 3.1)

5. The Chair advised members that tenures for Paul Reid and Jacqueline Harris were about to expire on 15 October 2017. The recruitment exercise to fill these vacancies is almost complete. Once successful candidates are appointed, members will be advised before the formal appointments are announced.

6. Members noted that committee membership will be considered in light of those appointments.

7. The Chair thanked Paul Reid on behalf of the Council and Access to Justice Committee for his invaluable contribution and assistance over the last three years.

8. **Members approved the re-appointment of Antony Jones QC to the ICT Committee for a further period of 3 years from 24 November 2017.**

Item 3.2 – Revision of Standing Orders (Paper 3.2)

9. **Paper 3.2** invited members to consider and approve a revision to the Council's Standing Orders, to provide that the Council would *normally* meet six times per year. This follows the July meeting of the Council being cancelled due to insufficient substantive business and was proposed to create flexibility should the situation arise again in the future.

10. **Members approved the proposed revision to the Council's Standing Orders.**

Item 3.3 – Records management arrangements (Paper 3.3 and 3.3A-B)

11. **Paper 3.3** provided members with an update in relation to records management arrangements for the Council. Members considered a revised draft of the Council's Publication Scheme which had been updated in line with changes made to the Model Publication Scheme and Guidance which was produced by the Scottish Information Commissioner on 27 July 2017.
12. **Members approved the proposed revisions to the Council's Publication Scheme and Guide to Information.**
13. **Members also noted the ongoing arrangements in relation to the Council's Records Management Plan.**
14. **As both documents are living documents, members authorised the Secretariat to make future routine revisions to both documents as appropriate, with any non-routine matters referred to the Lord President in the first instance in his capacity as Chair of the Council.**

Item 4: Work Programme

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

15. Jan Marshall updated the Council on legislative developments and other matters. She reported that the Contract (Third Party Rights) Bill passed stage 3 on 21 September; that the Civil Litigation (Expenses and Group Proceedings) Bill is being considered in committee at stage one and that the Government had indicated that it would support the proposal by John Finnie MSP for a bill to ban the physical punishment of children. She also reported that the Limitation (Childhood Abuse) Act 2017 would come into force on 4 October and that work is ongoing to implement the Courts Reform (Scotland) Act 2014 and the Tribunals (Scotland) Act 2014. In respect of other developments, she advised that the Justice Directorate had published in the summer a document setting out the Scottish Government's Vision and Priorities for Justice in Scotland and the Government's Programme for Government for 2017/18 was published in September. She noted that the Programme includes a bill on damages and prescription. It also includes a commitment to consult on a review of the Children (Scotland) Act 1995 and on reforming gender recognition legislation and that the Government will publish its response on aspects of succession law. Finally she reported that the Government had published on 1 October its response to its consultation on "Developments in Environmental Justice" and that Ian Gordon has been appointed as Judicial Complaints Reviewer with effect from 1 September.

Item 4.2 – Update from SCTS on Making Justice Work programme of reform and Shaping Scotland’s Courts (Oral)

16. Craig McCorkindale updated the Council on the Making Justice Work programme of reform. In particular, he advised members that the remaining areas included the implementation of the Simple Procedure (Special Claims) Rules, the development of the online portal of the Scottish Courts and Tribunals Service’s Integrated Case Management System (“ICMS”).

Item 4.3 – Business Tracker (Paper 4.3)

17. **The Council noted Paper 4.3 which provided an update of the Council’s work.**

18. Roddy Flinn provided the Council with an update on the work being undertaken to prepare for Brexit. A planning exercise is underway to identify the impact of Brexit on Rules of Court and populate a table of what must be changed. Roddy reported that SCJC are in contact with the Scottish Government and the Rules Councils in England and Wales in order to be aware of the approaches they are taking to Brexit preparations.

Item 5: Justice system reform: Courts reform

Item 5.1 – Update from the Rules Rewrite drafting Team (Paper 5.1)

19. Kenny Htet-Khin provided an update on the work of the Rules Rewrite Drafting Team. He advised that the working groups have now been set up for the first four workstreams:

Work Stream 1 - Commencement and Initial case management is due to meet on the 10 October. It will initially be looking at the core documents required to initiate an action and what should go in them, whether we should discontinue or modernise pleas in law, and how best the Council might encourage concise pleading.

Work Stream 2 - Applications and Motions meeting will be held at the beginning of November.

Work Stream 3 - Decrees, Extracts and Enforcement and

Work Stream 4 - Evidence, Proof and Hearings will meet at the end of October.

20. Kenny advised that the summer tours are complete with 8 talks given around Scotland. The secretariat is preparing a paper summarising the feedback received. In addition to the summer tour, Roddy Flinn and Kenny gave a talk to the Glasgow

Procurators on court reform and have also been invited to speak at the annual conference of Walker Love, Sheriff Officers.

21. Members also considered Paper 5.1, which provided an update on all work being undertaken as part of courts reform.

22. **Members noted the contents of this paper.**

Item 6: Proposals for rules: policy development

Item 6.1 – Applications for expenses out of the Scottish Legal Aid Fund (Papers 6.1 and 6.1A)

23. John Thomson spoke to **Paper 6.1** which invited the Council to consider and approve a draft instrument at **Paper 6.1A**. The instrument had been developed by the Costs and Funding Committee and proposed changes to replace the existing rules regulating procedure in applications for awards of expenses out of the Legal Aid Fund, under section 19 of the Legal Aid (Scotland) Act 1986 (“the Act”).

24. **Members approved the draft instrument at Paper 6.1A and agreed that it be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 7: Proposals for rules: implementation of legislation

Item 7.1 – Immigration Act (Papers 7.1 and 7.1A-D)

25. Lauren Gibb spoke to **Paper 7.1** which invited the Council to consider policy proposals from the UK Government seeking new rules of court in order to implement the Immigration Act 2016 (“the 2016 Act”).

26. The Paper related to three separate provisions contained within the 2016 Act namely Illegal Working Compliance Orders (IWCO), Bank Account Freezing Orders (BAFO) and Labour Market Enforcement Orders (LMEOs).

27. **Members considered Papers 7.1 and 7.1A-D and:**

- **confirmed that they are content that no additional provision should be included in the rules of court for BAFO applications and that the normal Summary Application Rules should apply (Paper 7.1B),**
- **noted that rules relating to LMEOs may be necessary at a future date and that the Secretariat will continue to liaise with the Home Office in this regard (7.1C)**

- **approved rules making provision for some procedural matters relating to IWCOs at Paper 7.1D and agreed that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 7.2 – Electronic Communications Code (Papers 7.2 and 7.2A-B)

28. Roddy Flinn introduced these papers, which relate to policy proposals from the Scottish Government and the UK Department for Culture, Media and Sport (“DCMS”) for court rules concerning the transfer of cases under the Electronic Communications Code (“the Code”) from the Lands Tribunal for Scotland (“the Lands Tribunal”) to the sheriff court.

29. **Members considered Papers 7.2 and 7.2A-B and agreed that draft rules be prepared for consideration at a future meeting.**

Item 7.3 – Drug Dealing Telecommunications Restriction Orders (Papers 7.3 and 7.3A-B)

30. Members were invited to consider papers, introduced by Roddy Flinn, which relate to a request from the Home Office for court rules to support the Drug Dealing Telecommunications Restriction Orders Regulations 2017. It was noted that the nature of applications to be made to the court are similar to a paper due to be considered by the Rules Rewrite Committee in relation to the Criminal Finances Act 2017. It was agreed that it would be beneficial for the matters to be included in one instrument, if possible.

31. **Members considered Papers 7.3 and 7.3A-B and agreed that draft rules should be prepared for consideration at a future meeting.**

Item 8: A.O.C.B.

32. No other business was raised.

Agreement of private papers

33. At the conclusion of the meeting, members considered the publication of papers. Roddy Flinn advised that the Secretariat considered it appropriate to publish policy papers in relation to those agenda items approved by the Council.

34. The Council agreed that the following papers should be private: **3.3B; 4.3; 5.1; 6.1A; 7.1 7.1A-D; 7.2B; 7.3 and 7.3A-B.**

35. The Council agreed to publish the following papers: **2.2; 3.1; 3.2; 3.3; 3.3A and 6.1.**

Item 11: Dates of future meetings

36. Members noted the dates of future meetings and in particular noted that the next meeting will be at 10:30 am:

- Monday 20 November 2017 at 10:30 am
- Monday 22 January 2018 at 10:00 am
- Monday 19 March 2018 at 10:00 am
- Monday 14 May 2018 at 10:00am
- Monday 9 July 2018 at 10:00 am
- Monday 10 September 2018 at 10:00 am
- Monday 19 November 2018 at 10:00 am

Scottish Civil Justice Council Secretariat

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