

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 20 MARCH 2017 AT 10 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

MINUTES

Members Present: Lord President (Chairman)

Eric McQueen (Chief Executive, SCTS)

Gery McLaughlin (Scottish Government)

Lord Menzies

Lord Tyre (for item 6.1 only)

Sheriff Principal Abercrombie

Sheriff Hughes

Lynda Brabender (Advocate)

Kenneth Campbell QC (Advocate)

Paul Reid (Solicitor)

Jacqueline Harris (Solicitor)

Joel Conn (Solicitor)

Ian Maxwell (Consumer representative)

Jane Williams (Consume representative)

Employment Judge Joseph d'Inverno (LP member)

Brandon Malone (LP member)

In attendance: Jane MacDonald (Legislation Implementation Team, SCTS)

Yvonne Anderson (Court of Session, SCTS)

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)

Caroline Mair (Deputy Legal Secretary, Lord President's Private Office)

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)

Apologies: Colin Lancaster (Chief Executive, SLAB)

Lord Boyd

Lord Tyre

Sheriff Murphy

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Colin Lancaster, Lord Boyd, Lord Tyre and Sheriff Murphy.
2. The Chairman welcomed Kenneth Campbell to his first meeting.
3. **The Council agreed not to publish the following papers: 2.2; 2.3; 3.1; 3.2; 3.2A; 4.3; 4.4; 4.4A; 5.1; 5.2; 5.2A; 7.1; 7.1A; 7.3; 7.3A; 7.3C; 7.4; 7.4A; 7.5; 7.5A-B.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

4. **Members approved the minutes of the previous meeting.**

Item 2.2 – Activity since last meeting (Paper 2.2)

5. **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 3: Proceedings

Item 3.1 – Committee Membership (Paper 3.1)

6. **Members approved the following changes to Committee membership**
- **James Mure QC to the Costs and Funding Committee for a further period of three years from 10 March 2017;**
 - **Lady Wolffe and Sheriff Thornton to the Rules Rewrite Committee for a further period of three years from 12 May 2017; and**
 - **Fiona Cameron of the Scottish Government to the ICT Committee as the Scottish Government’s standing representative.**

Item 3.2 – Strategy meeting: next steps (Papers 3.2 and 3.2 A-B)

7. Members considered **Paper 3.2**, which invited the Council to consider matters arising from the strategy meeting held on 23 January 2017.

8. **Members agreed the following:**
- **in relation to stakeholder engagement:**
 - **having noted the proposals for a summer tour for publication of the new civil procedure rules, that if successful, this model would be employed for future significant pieces of work;**
 - **that discussions will take place at Committee level in advance of work progressing on new policy development to ensure key stakeholders are identified at an early stage;**
 - **in relation to the publication of papers, that papers should be published once final policy decisions have been taken and that the decision to publish will be made after the item has been discussed;**
 - **in relation to meeting papers:**
 - **that meeting agendas should identify which items are new policy proposals and which items are to implement new legislation;**
 - **that papers should indicate when a matter has been previously considered by Committee or Council and on which dates;**

- in relation to the pace of change, that indicative timescales should be agreed at the outset of each new substantive piece of work in order to manage expectations;
- in relation to Committee structure and membership, that Committee Chairs and policy leads should review the Committee memberships on an ongoing basis to ensure that stakeholders are appropriately represented;
- in relation to the role of observers at meetings, that although not members, observers are able to fully participate in meeting discussions, raising matters that they think may be of relevance to those discussions; and
- in relation to the review structure for substantive rules, that the lead Committees would continue to be responsible for undertaking the relevant reviews.

Item 4: Work Programme

Item 4.1 - Update from the Scottish Government on legislative developments_(Oral)

9. Gery McLaughlin updated the Committee about recent legislative developments. He advised that the Contract (Third Party Rights) and Limitation (Childhood Abuse) Bills are progressing through Parliament and that the Justice Committee of Parliament is currently taking evidence as part of its Stage 1 consideration of the Bills. He advised that the Scottish Government intend to introduce a Bill which is provisionally titled the 'Expenses and Funding on Civil Litigation (Scotland) Bill' shortly and that work is ongoing with regards to the implementation of the Courts Reform (Scotland) Act 2014 and the commencement of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, which is scheduled to commence in the summer of 2017.

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

10. Craig McCorkindale, SCTS Director for Civil Courts Reform provided an update on the Making Justice Work programme of reform. He advised members that staff working on the Integrated Case Management System (ICMS) project are currently working through a gap analysis on the work remaining for enhancement of the current system which is live for internal use, the rollout of the portal to support electronic submission, and the remaining work to be done for extension of ICMS to the Court of Session. He advised that a prioritisation session is being held in April to

consider the outputs of that work, review the project's priorities and agree a revised rollout plan for Civil Online. He advised members that when that plan is complete, SCTS will issue a communication, likely to be in April or May, to communicate that information to the public.

11. Members considered additional **Paper 4.2**, which sought the Council's views on the most appropriate date for the coming into force of the Simple Procedure (Special Claims) Rules ('the special claims rules') on behalf of the Making Justice Work ('MJW') Programme Board.

12. Members noted that it was previously planned that the special claims rules could come into force in September 2017. However, given the ongoing work on the ICMS and the likely late 2017 commencement of Section 16 of the Housing (Scotland) Act 2014, which transfers the functions and jurisdiction of the sheriff in relation to certain private rented housing actions to the First-tier Tribunal, the MJW Programme Board had asked the Council to take a view on delaying the commencement date of the special claims rules. The Board will then take account of the Council's views when considering an appropriate commencement date for the special claims rules.

13. **Members agreed that a delay in the commencement of the special claims rules would be sensible.**

Item 4.3 - Business Tracker (Paper 4.3)

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

Item 4.4 – Priorities for 2017/18 (Papers 4.4 and 4.4A)

15. Members considered **Papers 4.4 and 4.4A**, which invited the Council to consider its priorities for 2017/18 for inclusion in its Annual Programme.

16. **Members noted the ongoing work of the Council and its Committees. It was agreed that all the ongoing work be incorporated into the Council's Annual Programme for 2017/18 but that the Programme should indicate what was achievable during the year ahead. As part of the discussions, Access to Justice members of the Council discussed the progress and scope of their work on lay representation and it was agreed that the Chair of that Committee would be invited to provide the Council with an update at the next appropriate meeting.**

Item 5: Justice System reform: Rules rewrite

Item 5.1 – Rules Rewrite Update (Paper 5.1)

17. Kenny Htet-Khin provided an update on the work of the Rules Rewrite Drafting Team. He advised that work was now ongoing in relation to the second stage of the simple procedure project and that it is intended that draft special claims rules will be submitted to the Council for consideration at its May meeting. He also advised that work was ongoing in relation to a report on new civil procedure rules.

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

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

Item 5.2 - Fatal Accident Inquiries (Papers 5.2 and 5.2A)

20. Sheriff Principal Abercrombie spoke to **Paper 5.2** which invited members to consider and approve the draft fatal accident inquiry rules (**Paper 5.2A**). Members noted that the Scottish Government has advised that the proposed commencement date is now 15 June 2017. Members were advised that it is intended to make the rules as soon as possible after they have been submitted to the Court to allow practitioners as much time as possible to become familiar with the rules.

21. **Members considered the draft rules at Paper 5.2A and:**

- **agreed that they be submitted to the Court for approval, subject to any stylistic or typographical amendments;**
- **approved a review of the rules to take place approximately 18-24 months after commencement; and**
- **agreed to consult the Crown Office and Procurator Fiscal Service prior to making any amendments to the rules.**

Item 6: Justice system reform: General

Item 6.1 – Proposals for an online court (Papers 6.1 and 6.1A)

22. Lord Tyre attended the meeting for this item to speak to **Paper 6.1**, which invited the Council to consider and approve the ICT Committee's recommendations following its review of online dispute resolution and online courts.

23. **The Council approved the ICT Committee's recommendation and formally recorded its support for a long term objective of an online court in Scotland and in particular the development of a three tier online system similar to that put forward by the Civil Justice Council and developed by Lord Justice Briggs in his interim and final reports. The Council also noted the Committee's suggestion that the online court should be taken forward in Scotland using simple procedure cases in the first instance.**

24. **The Council agreed that Papers 6.1 and 6.1A be published on the Council's website.**

Item 7: Proposals for rules

Item 7.1 - Consultation on draft rules for Protective Expenses Orders (Papers 7.1 and 7.1A)

25. Members considered **Papers 7.1 and 7.1A**, which invited the Council to consider and approve a draft consultation paper in respect of draft rules for Protective Expenses Orders (PEOs). The consultation paper, shown at **Paper 7.1A**, set out the background and narrates the history of PEOs in the Court of Session, from the creation of Chapter 58A to the current review focusing on the prescribed test and the procedure by which applications are determined.

26. Members agreed that the consultation should run for the standard 12 week period.

27. **Members approved the consultation paper at Paper 7.1A.**

Item 7.2 - Curators ad litem (Papers 7.2 and 7.2A-B)

28. Members considered **Paper 7.2** which invited the Council to consider and approve a draft instrument proposing changes to the court rules that apply to the appointment of curators *ad litem* to defenders in family actions.

29. These rules have been developed by the Family Law Committee in response to a joint paper from the Scottish Government and the Mental Welfare Commission ('MWC'), in which amendments were suggested to Ordinary Cause Rules 33.16 and 33A.16, and to Rule 49.17 of the Rules of the Court of Session, to address difficulties that have been raised with the MWC by practitioners and litigants in relation to curators ad litem.

30. **Members approved the draft Act of Sederunt at Paper 7.2A, with the addition of a savings provision, and agreed that it be submitted to the Court of**

Session for consideration, subject to any stylistic or typographical amendment.

Item 7.3 - EU Damages Directive (Papers 7.3-7.3A-C)

31. Members considered **Paper 7.3** which invited the Council to consider and approve draft rules in order to implement Directive 2014/104/EU governing actions for damages for infringement of competition law.

32. Members noted that the Directive is intended to make it easier for businesses and individuals to claim compensation when they have been victims of a breach of European competition law and that whilst many of the articles in the Directive are adequately covered by existing court rules, the draft instrument is necessary to provide specialist rules relating to the recovery of documents in a competition claim and also to provide a procedure by which certain new applications under the 1998 Act are to be made

33. **Members approved the draft Act of Sederunt at Paper 7.3A and agreed that it be submitted it to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 7.4 – EU Insolvency (Papers 7.4 and 7.4A)

34. Members considered **Paper 7.4** which invited the Council to consider and approve draft rules in relation to Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. Members noted that cross-border insolvency proceedings are currently governed at an EU level and that the draft instrument shown at **Paper 7.4A** makes textual amendments to replace the references to the original Insolvency Regulation with references to the new Recast Regulation.

35. **Members approved the draft Act of Sederunt at Paper 7.4A, with the addition of a savings provision, and agreed that it be submitted it to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 7.5 - Vexatious Litigants (Papers 7.5 and 7.5A-B)

36. Members considered **Paper 7.5** which invited the Council to consider and approve a draft rule inserting a new Rule 4.2ZA into the Court of Session to make

provision for handling applications to initiate a court action by an individual who has been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898.

37. Members noted that these have been developed by the Rules Rewrite Committee following a request from the Deputy Principal Clerk of Session to make provision for handling such applications.

38. Members approved the draft Act of Sederunt at Paper 7.5A and agreed that it be submitted it to the Court of Session for consideration, subject to any stylistic or typographical amendment.

Item 8 – AOCB

39. No other business was raised.

Item 9: Dates of future meetings

40. Members noted the dates of future meetings:

- Monday 29th May 2017 at 10 am
- Monday 10th July 2017 at 10 am
- Monday 02nd October 2017 at 10 am
- Monday 20th November 2017 at 10 am

Scottish Civil Justice Council Secretariat

March 2017

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