

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 20 NOVEMBER 2017 AT 10.30 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES

- Members Present:** Lord President (Chair)
Colin Lancaster (Chief Executive, SLAB) (Until item 7.1)
Jan Marshall (Scottish Government)
Lord Menzies
Lord Boyd of Duncansby
Sheriff Principal Abercrombie QC
Sheriff Hughes
Sheriff Murphy QC
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Elena Fry (Solicitor) (from item 4.2)
Ian Maxwell (Consumer representative)
Jane Williams (Consumer representative)
Employment Judge Joseph d’Inverno (LP member)
Brandon Malone (LP member)
- In attendance:** Jane MacDonald (Legislation Implementation Team, 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)
Andrew Campbell (Deputy Legal Secretary, Lord President’s Private Office)
Norman Munro (Deputy Legal Secretary, Lord President’s Private Office)
Inez Manson (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:** Eric McQueen (Chief Executive, SCTS)
Lord Tyre
Lynda Brabender QC
Kenneth Campbell QC
Diane Machin (Offices of the Court of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Eric McQueen, Lord Tyre, Lynda Brabender QC, Kenneth Campbell QC and Diane Machin.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

2. **The minutes were approved.**

Item 2.2 – Activity since last update (Paper 2.2)

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

Item 2.3 – Items by correspondence (Paper 2.3)

4. **Paper 2.3**, which advised of the outcome of consideration of matters by correspondence since the last meeting, was noted.

5. **One matter had been considered in relation to the Rules Rewrite Project Working Group arrangements:**

- **Paper 2017/19 had been issued to members on 17 October 2017, inviting members to approve additional appointments to the working groups for the Rules Rewrite Project work streams.**
- **The appointments of: Catriona Whyte, to the working group taking forward the work under work stream 1, Ian Dickson to the working group taking forward the work under work stream 3; and Marie-Louise Fox to the working group taking forward the work under work stream 4, were approved.**

Item 3: Proceedings

Item 3.1 – Committee Membership (Paper 3.1)

6. **Paper 3.1**, which invited the Council to consider and approve changes to committee membership, was considered and **the appointments of:**

- **Elena Fry to the Costs and Funding Committee and;**

- **Campbell Normand to the Personal Injury Committee, were approved.**

Item 4: Work Programme

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

7. Jan Marshall updated the Council on legislative developments. Annabelle Ewing, Justice Minister, will give evidence to the Scottish Parliament's Justice Committee on 21 November as part of its Stage 1 consideration of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

8. The necessary statutory instruments had been laid in Parliament to further implement the Tribunals (Scotland) Act 2014 and bring the Scottish Charity Appeals Panel and the Additional Support Needs Tribunal into the Scottish Tribunals structure on 12 January 2018. The Government had launched 2 consultations, one on Scottish Court Fees for 2018-2021 and another on proposals for reform of the Gender Recognition Act 2004. These are due to close on 12 January and 1 March 2018 respectively.

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

9. Craig McCorkindale updated the Council on the Making Justice Work programme of reform. Much of the remaining work is now subsumed into the Rules Rewrite Project. The ICMS system was on track in relation to the new civil online portal. Phase 1, in relation to case tracking, is currently in testing and is anticipated to be rolled out in March 2018. Development work is still ongoing in relation to Phase 2, which relates to online submission of documents.

10. SCTS have undertaken a series of workshops in relation to teething problems that staff and the judiciary are experiencing with simple procedure and there is ongoing liaison with the Rules Rewrite Drafting Team to consider the issues raised.

11. Sheriff Principal Abercrombie provided further information on the issues raised, advising that one of the key issues was the lack of consistency across courts and sheriffdoms. Members echoed similar experiences being fed back to them.

12. Members also noted that the front loading of the cases appears to have resulted in less proofs proceeding but that further consideration may require to be given to the management of court programming.

Item 4.3 – Business Tracker (Paper 4.3)

13. **Paper 4.3, which provided an update of the Council’s work, was noted.**

Item 5: Justice system reform: Courts reform

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

14. Kenny Htet-Khin provided an update on the work of the Rules Rewrite Drafting Team. Work streams 1, 2 and 4 were now established and that work stream 3 is due to meet shortly.

15. **The contents of the Rules Rewrite Tracker at Paper 5.1 and the contents of Paper 5.1A, which provided the Council with a summary of the recent Summer Tour events held to promote the Rules Rewrite Project, were noted.**

16. **This was Kenny’s last meeting before taking up a post in the Scottish Parliament. The Council expressed thanks to him for his valuable work and assistance.**

Item 5.2 – Simple Procedure Rules (Papers 5.2 and 5.2A-B)

17. **Papers 5.2 and 5.2A-B**, which invited the Council to consider and, if content, approve draft rules making amendments to the core Simple Procedure Rules and proposals to bring forward the planned review of the core Simple Procedure Rules, were considered.

18. Draft rules at **Paper 5.2A** had been considered by the Access to Justice Committee and proposed operational fixes to address a number of issues that have been brought to the attention of the Rules Rewrite Drafting Team (‘RRDT’) by SCTS.

19. The draft rules at **Paper 5.2A** were considered as was whether provision should be made in relation to recall of decisions in cases where the sheriff has dismissed a case in open court with the parties present. **The RRDT agreed to consider this matter further. Final rules would be circulated for consideration by correspondence.**

20. In relation to proposals to bring forward the review of the core Simple Procedure Rules, the proposals follow an invitation from the Making Justice Work Programme Board to undertake the review in advance of commencement of the Simple Procedure (Special Claims) Rules (‘the Special Claims Rules’). This is to allow any operational issues to be considered in advance of the second stage introduction of the Special Claims Rules.

21. The proposal to bring forward the review was supported by the Secretariat and RRDT on the basis that it will focus primarily on the operation of the Rules with a

further review required at a later date to review whether the policy aims of the Simple Procedure have been met.

22. The proposal to bring forward the planned review of the core Simple Procedure Rules was approved.

23. A methodology for the review will be developed and presented to the Council for consideration at a later date. The Secretariat is currently considering methods such as a public consultation, focus groups with stakeholders and commissioning research to gain an insight into how accessible and user friendly party litigants find the Simple Procedure Rules.

Item 6: Proposals for rules: policy development

Item 6.1 – Reform of Chapter 10 of the Rules of the Court of Session (Papers 6.1 and 6.1A-B)

24. **Papers 6.1 and 6.1A-B**, which invited the Council to consider and approve proposals to amend Chapter 10 of the Rules of the Court of Session, in relation to sittings of the court, were considered.

25. Following the making of Direction No 1 of 2016, the Lord President's Private Office has considered the rule changes to Chapter 10 which would be appropriate in consequence of the removal of court terms and the coming abolition of the summer vacation in 2018. In the process of this consideration, the opportunity has also been taken to review the content of the entire Chapter with a view to modernising the drafting and stripping out unnecessary provisions.

26. **Papers 6.1 and 6.1A-B were considered. The draft instrument at Paper 6.1A for submission Court of Session for consideration, subject to any stylistic or typographical amendment was approved.**

Item 6.2 - Case management in Family actions (Papers 6.2 and 6.2A-C)

27. **Papers 6.2 and 6.2A-C**, which presented the Council with a report on case management in family actions prepared by the Family Law Committee's (FLC) sub-committee, were considered and invited the Council to consider and confirm its preferred approach to consultation.

28. The report follows on from research undertaken by Dr Richard Whitecross and Dr Claire Lindsay on behalf of the FLC and considers a policy paper by the Scottish Government which proposes extensive changes to promote more effective and consistent case management in family actions.

29. The FLC's view, that it would be worthwhile to undertake a public consultation at this stage on the recommendations, rather than at a later stage on the draft rules, was noted.

30. **Papers 6.2 and 6.2A-C were considered. The proposals for a consultation to be carried out on the recommendations in the FLC sub-committee's report were approved.**

31. A consultation document will be drafted for consideration by both the FLC and Council.

Item 7: Proposals for rules: implementation of legislation

Item 7.1 – Electronic Communications Code (Papers 7.1 and 7.1A)

32. **Papers 7.1 and 7.1A**, which invited the Council to consider and, if content, approve draft rules amending the Summary Application Rules to implement the Electronic Communications Code (Jurisdiction) Regulations 2017 ('the Jurisdiction Regulations') were considered. The Jurisdiction Regulations make provision for the transfer of cases under the electronic communications code from the Lands Tribunal for Scotland to the sheriff court.

33. This matter was previously considered by the Council at its October meeting and draft rules were instructed.

34. **The draft instrument at Paper 7.1A for submission to the Court of Session for consideration, subject to any stylistic or typographical amendment was approved.**

Item 7.2 – Drug Dealing Telecommunications Restriction Orders (Papers 7.2 and 7.2A-C)

35. **Paper 7.2 and 7.2A-C**, which invited the Council to consider and, if content, approve draft rules amending the Summary Application Rules to support the Drug Dealing Telecommunications Restriction Orders Regulations 2017 ('the Regulations'), were considered.

36. The draft rules at **Paper 7.2A** prescribe bespoke forms for the form of application, a form of order made by the court and a form to apply for a discharge or variation of any order. The draft rules replicate the provisions within the Regulations in relation to an application not being intimated and being heard and determined in private, given its critical nature.

37. **Papers 7.2 and 7.2A-C were considered. The draft instrument at Paper 7.2A for submission to the Court of Session for consideration, subject to any stylistic or typographical amendment was approved.**

Item 8: A.O.C.B.

38. Mandy Williams advised that for the last two years the Council has held an annual strategy meeting on the same day as the January Council meeting. This has traditionally been an all-day event to allow members to reflect on progress on priorities, review processes and to start to consider the priorities for the year ahead.

39. Mandy asked whether, given that much of the work of the Council and its Committees for the year ahead will be focused on the Rules Rewrite Project, a strategy meeting is required for 2018/19.

40. **It was agreed that, whilst a formal strategy meeting was not required for 2018, a member's event bringing Council and Committee members together, with possible training sessions, would be useful.**

Agreement of private papers

41. The Council agreed to publish papers: **2.3, 3.1, 5.1A, 5.2, 6.1, 7.1 and 7.2.**

Item 9: Dates of future meetings

42. Members noted the dates of future meetings:

- 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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