

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 18 July 2022 AT 10.30AM

APEX HOTEL, GRASSMARKET, EDINBURGH

MINUTES

Present: Lord President (Chair)
Lynda Brabender QC
Lady Carmichael
Sheriff Principal Ross
Joel Conn
Employment Judge D'Inverno
Thomas Docherty
Brandon Malone
Eric McQueen (SCTS)
Denise Swanson (Scottish Government)
Trish Fiddes (Keeper of the Rolls - in place of Chris Fyffe)
David Smith (Legislation and Implementation team - in place of Nicola Anderson)

In attendance: Saarah Mahood
Ysabeau Middleton (Lord President's Law Clerk)

Support: Jessica Flynn (SCJC)
Graeme Welsh (Secretary, SCJC)

Apologies:
Nicola Anderson
Craig Anderson
Lord Ericht
Chris Fyffe
Jaqueline Harris
Sheriff Hughes
Colin Lancaster (SLAB)
Catherine Smith QC
Sheriff Way

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed members and attendees to the forty-eighth meeting of the Council. There were seven apologies.
2. The Council agreed not to publish papers 4.1, 4.1A, 4.1B, 4.2, 4.2A, 4.3 and 4.3A.

Item 2: Previous meeting

Item 2.1 - Items by correspondence (Paper 2.1)

3. The Chair introduced paper 2.1 which provided information on five matters which had been considered by correspondence since the last meeting:
 - **Paper 2022/06** was issued on 01 April 2022 and asked members to consider and approve a miscellaneous rules instrument for the Economic Crime (Transparency & Enforcement) Act 2022. Responses were invited by 08 April. There were no responses. This signified consent. The rules were subsequently published;
 - **Paper 2022/07** was issued on 13 April 2022 and asked members to approve the re-appointment of Stewart Mullen to the Cost and Funding Committee and Sheriff Principal Pyle to the Family Law Committee. Responses were invited by 27 April 2022. One response was received which positively approved re-appointment. There were no other responses. This indicated consent;
 - **Paper 2022/10** was issued on 13 May 2022 and invited members to approve the draft minutes from the last Council meeting on 25 April 2022. Responses were invited 23 May 2022. There were no responses, thus indicating approval. The minutes were subsequently published on the Council's website;
 - **Paper 2022/13** was issued on 16 June 2022 and asked members to approve the appointment of Vikki Melville, Lord Weir and Sheriff Principal Ross to the Personal Injury Committee. Responses were invited by close of business on 30 June 2022. There were no responses, thus indicating consent; and
 - **Paper 2022/15** was issued on 17 June 2022 and asked members to approve the issue of a targeted consultation on proposed changes to the

Inner House Rules. Responses were invited by 1 July. There were no responses, thus indicating approval. The consultation papers were subsequently issued to the 6 consultees identified. The consultation papers were uploaded to the Council's website.

4. The Council noted the paper.

Item 3: Governance

Item 3.1 – Annual Report 2021/22 & Annual Programme for 22/23

5. The Chair introduced papers 3.1 and 3.1A. The format of the Annual Report for 2021/22 and Work Programme for 2022/23 included:

- A Foreword by the Lord President;
- An About Us section containing information about the Council and its Committees;
- A section on Key Achievements which set out the eight sets of rules which had been approved by Council for consideration by the Court of Session; and
- The Annual Programme, which provides details on the Council's sixteen priorities for the next year, and the pipeline of forty two outstanding rule requests.

6. The Council approved the Annual Report and Annual Programme

Item 3.2 – SCJC Standing Orders

7. Paper 3.2 proposed two changes to the SCJC Standing Orders:

- To provide greater flexibility for Committee members to be reappointed (Section 2.5); and
- To make the process for publishing minutes clearer (section 8.5).

8. The Council approved the changes to the Standing Orders.

Item 4: Justice System Reform

Item 4.1 – The New Civil Procedure Rules

9. The Council noted that the Rules Rewrite Committee had met in April, May and June and was proposing the publication of the New Civil Procedure Rules: Second Report.

10. The Council approved the report and its publication.

Item 4.2 – Domestic Abuse (Protection) (Scotland) Act 2021

11. The Council noted the rules request from the Scottish Government and discussed whether new forms containing all of the proposed detail were required.

12. The Council requested that the secretariat liaise with the Scottish Government to confirm the content of the Form of Extract.

13. The Council approved the other proposed changes and will consider changes to the Form of Extract by correspondence.

Item 4.3 Abusive Behaviour and Sexual Harm (Scotland) Act 2016

14. The Council considered the draft instrument. It discussed the Form of Citation (Form 3B) in the context of the primary legislation, which requires answers to be lodged and a hearing to be requested. The Council noted that this was a departure from other how other Summary Applications progress. Normally a hearing would be routinely fixed without the need for a request.

15. The Council discussed the advantages and disadvantages of having generic forms, but it was recognised that this matter had to be looked at in much more detail.

16. The Council approved the draft rules instrument for onward submission to the Court of Session for consideration and approval subject to any stylistic and typographical amendments.

Item 4.4 Age of Criminal Responsibility

17. An oral update was provided. The Council noted that no applications had been lodged since the commencement of the Act on 17 December 2021.

18. The Council noted that the Working Group of the Family Law Committee will shortly consider an update on progressing family friendly forms.

19. The Council noted this update.

Item 4.5 Rules on Modes of Attendance

20. An oral update was provided to Council. Members noted that, since the consultation, a new set of draft rules had been developed. The revised rules attempted to reflect respondents' feedback as far as possible. Further refinement of the rules and the underpinning policy was required before submission to Council.

21. The council noted this update.

Item 5: AOB

Sheriffs Principal Guidance

22. An item was raised which asked members to consider the recent guidance published by the Sheriffs Principal in relation to summary cause actions under the Housing (Scotland) Act 2001.

23. The Council considered that the matter was not one relating to rules of court. Anyone wishing to make comment on this guidance should direct this to the Sheriffs Principal.

Civil Justice Statistics

24. The Council noted the inclusion of the 2020/21 Scottish Civil Justice Statistics for information.

Item 6: Dates of Future Meetings

- Monday 17 October 2022

**Scottish Civil Justice Council Secretariat
July 2022**