

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**

**MONDAY 20 FEBRUARY 2023**

**EDINBURGH**

**MINUTES**

- Present:** Lord President (Chair)  
Catherine Smith KC  
Denise Swanson (Scottish Government)  
Eric McQueen (SCTS)  
Ian Reid  
Jaqueline Harris  
Lord Ericht  
Nicola Irvine  
Sheriff Way  
Thomas Docherty  
Sheriff Martin-Brown  
Iain MacRae
- In attendance:** Carolyn Magill (LPPO)  
Chris Fyffe (DPCS)  
Ysabeau Middleton (Lord President's Law Clerk)
- Support:** Craig McCorkindale (SCJC)  
Graeme Welsh (SCJC)  
Jessica Flynn (SCJC)  
Karen Stewart (SCJC)  
Kelly Jack (SCJC)  
Paula Preston (SCJC)
- Apologies:** Colin Lancaster (SLAB)  
Lady Carmichael  
Sheriff Hughes  
Sheriff Principal Ross

**Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those attending to the fiftieth meeting of the Council, and introduced the three new members recently appointed.

2. Members were invited to provide views on marking the Council's 10 year anniversary, which is 28 May 2023.
3. The Council agreed not to publish papers 2.2A, 2.2B, 3.1, 3.1A, 3.2, 3.2A, 3.3, 3.3A, 3.4, 3.4A and 3.5.

## **Item 2: Previous meeting**

### *Item 2.1 - Items by correspondence (Paper 2.1)*

4. The Chair introduced paper 2.1 on the 5 matters considered by correspondence since the last meeting:
  - A rules request for Brexit Civil Protection Orders was issued on 20 October 2022 and invited members to consider a draft SSI on Brexit Civil Protection Orders. Members approved the draft rules and the issue of drafting instructions for court rules to the Lord President's Private Office.
  - An administrative matters paper was issued on 09 November 2022 and invited members to approve draft minutes of the Council meeting held on 17 October 2022. Final minutes were approved and published on the Council's website.
  - A paper on the fee request from the Law Society of Scotland was issued on 18 November 2022 inviting members to approve the Costs and Funding Committee's recommendations for an increase to solicitor's fees. Drafting instructions were issued to the Lord President's Private Office.
  - A paper relating to the Telecommunications infrastructure (Leasehold Property) Act 2021 was issued on 12 January 2023. The paper invited the Council to consider provision of an inclusive fee for TILPA applications. The proposed fees were submitted to the Court of Session with a view to being implemented by the end of February 2023.
  - Rules on Modes of Attendance were issued on 16 January 2023 inviting members to approve amended draft rules on the Modes of Attendance. An accompanying EQIA and BRIA were issued on 26 January 2023. Four responses were received. The draft rules were amended for Council's consideration on 20 February 2023.

**5. The Council noted the paper.**

*Item 2.2 – Judicial Rate of Interest*

6. The Chair introduced papers 2.2 and 2.2A regarding the letter sent regarding the Judicial Rate of Interest, and the negative response received from the Minister for Community Safety. No further action will be taken.

**7. The Council noted the papers.**

*Item 2.3 - Age of Criminal Responsibility:*

8. An oral update was provided. No applications have been lodged since the commencement of the Act on 17 December 2021. The Family Law Committee will meet in April to approve forms for submission to the Council in May 2023.

**9. The Council noted the update.**

**Item 3: Work Programme**

*Item 3.1 – Modes of Attendance:*

10. The Chair introduced papers 3.1 and 3.1A. Members were invited to approve the latest rules on Attendance at Hearings. These reflected members' feedback from previous considerations. No changes were proposed. Members suggested that a Response to Consultation report is prepared and issued in order to keep consultees informed of the policy decisions taken.

**11. The Council approved the rules instrument for Attendance at Hearings.**

*Item 3.2 – Establishing a Tribunals Rules Committee:*

12. The Chair introduced paper 3.2 and 3.2A and members discussed:

- The forecast timings for the Scottish Ministers to complete the transfer of all 18 jurisdictions, which is the trigger for the Council's consideration of the establishment of a new Tribunals Committee; and
- The need to canvass the views of the Head of the Scottish Tribunals and the Tribunal Presidents on their objectives for improving the tribunal rules.

**13. The Council agreed that the establishment of the Tribunal Committee should be scheduled for consideration in 2026-27.**

**14. The Council agreed to add a task for a Rules Rewrite (for Tribunals) into the 2023-24 Work Programme.**

*Item 3.3 - Domestic Abuse (Protection) (Scotland) Act 2021 (Part 2):*

15. Members considered the updated policy paper from the Scottish Government (Paper 3.3), and the drafting instructions (paper 3.3A).

**16. The Council approved the drafting instruction for the Domestic Abuse (Protection) (Scotland) Act 2021 (Part 2)**

*Item 3.4 – Defamation and Malicious Publication (Scotland) Act 2021:*

17. Members considered papers 3.4 and 3.4A.

**18. The Council approved the drafting instruction for the Defamation and Malicious Publication (Scotland) Act 2021.**

*Item 3.5 – Evaluation of the Fatal Accident Inquiry Rules 2017:*

19. The Chair introduced paper 3.5. Members were in agreement with the general conclusions reached by this evaluation:

- The Fatal Accident Inquiry Rules 2017 are working as intended; and
- Given that there is no evident user demand for change a more detailed rules review exercise would be unnecessary.

20. That leaves the need to consider the general ‘care and maintenance’ of the FAI rules. Some further suggested edits have been identified by the secretariat. Those edits are being added into an updated version of this report, which will be shared with the Sheriffs Principal for comment.

**21. The Council noted the FAI Evaluation Report, which will be refreshed and reissued following feedback from the Sheriffs Principal.**

#### **Item 4: AOB**

*Utility Warrants*

22. An update was provided by the SCTS. Members noted the case by case approach taken for judicial decision making on applications in Scotland. That is significantly different from the bulk application test process which the media has implied as the norm for England and Wales.

**Item 5: Dates of Future Meetings**

- 22 May 2023 (TBC)
- 28 August 2023
- 20 November 2023

**Scottish Civil Justice Council Secretariat  
February 2023**