

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 03 JUNE 2024 AT 10.30AM

LEARNING SUITE, JUDICIAL INSTITUTE, PARLIAMENT HOUSE

Present: Lord President (Chair)
Fiona Drysdale KC
Thomas Docherty
Lord Ericht
Colin Lancaster (SLAB)
Iain MacRae
Riley Power (SCTS – attending for Eric McQueen)
Sheriff Way
Mandy Williams (SG – attending for Denise Swanson)

In attendance: Rachel Grant (LIT)
Chris Fyfe (Court of Session)
Edward McHugh (LPPO)

Support: Craig McCorkindale
Paula Preston
Karen Stewart
Graeme Welsh

Apologies: Lady Carmichael
Nicola Irvine
Sheriff Martin-Brown
Sheriff McCartney
Eric McQueen (SCTS)
Sheriff Principal Ross
Catherine Smith KC
Denise Swanson

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed members to the fifty-fourth meeting of the Council.

The Council agreed not to publish papers 3.1, 3.1A, 4.1A, 4.2, 4.3, 4.4 and 4.5

The Chair expressed his thanks to Eric McQueen (SCTS CEO) as a valued member since the Council's first meeting in June 2013, and noted he will retire soon.

Item 2: Previous meeting

Item 2.1 - Items by correspondence (Paper 2.1)

2. The Chair introduced Paper 2.1 on the three matters considered by correspondence since the last meeting:
 - **Paper 2024.03** was issued on 29 January 2024 and invited members to approve the appointment of Sheriff Principal Dowdalls to the Rules Rewrite Committee. Two responses were received. The Appointment was approved for a period of three years.
 - **Paper 2024.04** was issued on 29 January 2024 and invited members approve draft minutes from the SCJC's meeting held on 22 January 2024. Two responses were received. The minutes were finalised and published on 07 February 2024.
 - **Paper 2024.06** was issued on 22 March 2024 and invited members to approve the draft minutes from the SCJC strategy workshop held on 18 March 2024. Five responses were received. The minutes were published on 10 April 2024.

The Council noted the items agreed by correspondence.

Item 2.2 - Age of Criminal Responsibility:

3. An oral update was provided. There had been no applications lodged since the commencement of the Act on 17 December 2021;

The Council noted the update provided.

Item 3: Governance

Item 3.1 – Annual Report and Work Programme

4. The Chair invited the Council to approve the combined Annual Report and Work Programme. Paper 3.1A included:

- A **Foreword** by the Lord President as Chair
- An **About Us** section – which conveys the standing information on the Council, its committees and the arrangements made for support.
 - A **Key Achievements** section - which provides a narrative on the work that was delivered within the 2023-24 reporting period during which the Council has tabled **seven** sets of new rules with the Court of Session for consideration and approval. The Council noted that the narrative under *Formal Recommendations Made at* page 9, could be stated more succinctly.
 - An **Annual Programme** section – which summarises the eight priorities for 2024-25 as agreed at the March 2024 strategy meeting.

The Council approved the Annual Report and Work Programme for submission to the Scottish Parliament.

Item 4 – Work Programme

Item 4.1 – Protective Expenses Orders

5. Members were invited to consider the amending rules set out in Paper 4.1A. These address three compliance issues which were originally raised in the Council's 2017 consultation exercise and subsequently reiterated in the 2021 compliance report by the Aarhus Convention Compliance Committee.

The Council agreed to:

- **Reword paragraph 1 and 3 of rule 58A.8, to eliminate any differential in the approach to reclaiming;**
- **Insert paragraph 5 into RCS Rule 58A.5 and paragraph 3 in to rule 58A.6 so that a duty to maintain confidentiality is specified, in any court order made, as a prerequisite to the court imposing sanctions for any failure in that duty;**
- **Insert a new rule 58A.10 into the existing rules; to counter any implied exposure to an interveners costs (except on cause shown); and**
- **Not to consult again on the detail of these particular amendments as that would place an unnecessary burden onto respondents when they have already provided their views.**

The Council noted:

- **That work to progress the remaining ACCC compliance issues is ongoing and further papers are to follow.**

Item 4.2 – The Independent Monitoring Authority (IMA)

6. Members were invited to provide their views on the IMA’s request for rules to include a requirement for notification on any matter arising out of Part 2 of the EU Withdrawal Agreement.
7. Members noted the approach in England and Wales; that this requirement for notification is included as schedule 2 of a [Practice Direction](#). The Council concluded that a similar approach would be proportionate in Scotland.

The Council agreed that a Practice Note should be developed.

Item 4.3 United Nation Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

8. Members were invited to approve drafting instructions which cover the following sections of the 2024 Act:
 - Section 11 (Power for Commissioner (Children and Young Person) to bring or intervene in proceedings);
 - Section 12 (Power for Scottish Commission for Human Rights to bring or intervene in proceedings);
 - Section 25 (Strike Down declarators);
 - Section 26 (Incompatibility declarators);
 - Section 27 (Power to intervene in proceedings where strike down declarator or incompatibility declarator);
 - Section 34(Power to intervene in proceedings where a compatibility question arises); and
 - Section 35 (Reference of compatibility question to higher court).
9. Members noted that the rules will broadly follow similar procedures set out in:
 - Chapter 82 - Rules of the Court of Session (The Human Rights Act 1998) - *procedure for incompatibility declarators*;

- Chapter 95 - Rules of the Court of Session (Scottish Commissioner for Human Rights) – *process for intervening*; and
- Chapter 25A Rules of the Court of Session (Devolution Issues) – *procedure for raising and determination of a compatibility question*.

The Council agreed to issue the drafting instructions for UNCRC rules.

Item 4.4 – Hague Convention 2019

10. The Council were invited to approve the drafting instruction for rules relating to the Hague Convention 2019 (Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters).
11. Members noted that Chapter 62 Rules of the Court of Session would be amended so that the same procedure would apply to both Hague 2005 and Hague 2019 applications.

The Council agreed to issue the drafting instructions for rules relating to the Hague Convention 2019.

Item 4.5 – Certificate of Currency Conversation

12. The Council were invited to approve the drafting instruction for changes to court rules which require a certificate of currency conversion when registering and enforcing a foreign judgment.
13. Members noted that the Bank of England had stopped issuing conversation rate certificates around nine years ago. The rates are published online. Therefore the rules should be updated to remove the need for a certificate to be lodged. Chapters 62 and 7 of Rules of the Court of Session and Chapter 30 of the Ordinary Cause Rules will be updated.

The Council agreed to issue the drafting instruction for amending rules relating to currency conversation certificates.

Item 5: AOB

No other business was raised.

Item 6: Dates of Future Meetings

- 23 September 2024
- 09 December 2024

**Scottish Civil Justice Council Secretariat
June 2024**