

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 14 OCTOBER 2024 AT 10.30AM

LEARNING SUITE, JUDICIAL INSTITUTE, PARLIAMENT HOUSE

MINUTES

Present: Lord President (Chair)
Fiona Drysdale KC
Nicola Irvine
Malcolm Graham
Sheriff Principal Ross
Denise Swanson

In attendance: Chris Fyffe (Court of Session)

Support: Jessica Flynn
Craig McCorkindale
Sarah Jane McNicol
Karen Stewart
Graeme Welsh

Apologies: Lady Carmichael
Thomas Docherty
Lord Ericht
Colin Lancaster (SLAB)
Iain MacRae
Sheriff Martin-Brown
Sheriff McCartney
Sheriff Way

Item 1: Welcome, apologies and agreement of private papers

Item 1.1 – Access to Justice Foundation

1. The Chair welcomed members to the fifty-fifth meeting of the Council and introduced Graeme McWilliams from the Access to Justice Foundation to provide members with an overview of the work of that Foundation.
2. The Chair welcomed Malcolm Graham as the new SCTS Chief Executive to his first meeting. Apologies were noted.

3. Since the meeting was not quorate, the decisions made will be circulated to all members for approval after the meeting.
4. **The Council agreed not to publish papers 3.1, 3.1A, 3.2 3.2A, 3.3, 3.4, 3.4 A - D 3.5 and 3.6**

Item 2: Previous meeting

Item 2.1 - Items by correspondence (Paper 2.1)

4. The Chair introduced Paper 2.1 on the four matters considered by correspondence since the last meeting:
 - **Paper 2024.11** - invited members to approve the minutes of the previous meeting on 03 June 2024. The approved minutes were published on 14 June 2024.
 - **Paper 2024.12** - invited members to approve draft rules on United Nations Convention Rights of the Child (UNCRC) and 'compatibility questions' regarding children's rights. The Act of Sederunt came into force 16 July 2024.
 - **Paper 2024.13** - invited members to approve the appointment of Gordon Dalyell as a solicitor member to the Personal Injury Committee. Mr Dalyell was appointed 09 July 2024.
 - **Paper 2024.16** - invited members to approve the reappointments of Marie-Louise Fox, Fiona Campbell and Alison Reid to the Family Law Committee and Sheriff Jillian Martin-Brown to the Access to Justice Committee. The members were reappointed on 11 September 2024.
5. **The Council noted the items agreed by correspondence.**

Item 3 – Work Programme

Item 3.1 - Interventions made under statute (Papers 3.1 & 3.1A)

6. The Council were invited to approve the draft rules for Statutory Interveners that consolidated the existing chapters for:
 - Commissioner for Equality and Human Rights (CEHR)
 - Scottish Human Rights Commissioner (SCHR)
 - Independent Monitoring Authority (IMA)
 - Environmental Standards Scotland (ESS)

- 7. Members in attendance approved the statutory intervener rules instrument. Final approval will be subject to full Council approval by correspondence.**

Item 3.2 – Objections in diets of taxation (Papers 3.2 & 3.2A)

8. The Council were invited to approve the draft rules on Taxation of Judicial Expenses. The rules amended the number number of working days from three to ten for objections to be lodged in diets of taxations.
- 9. Members in attendance approved the rules instrument covering objections in a diet of taxation. Final approval will be subject to full Council approval by correspondence.**

Item 3.3 – Aarhus Convention (Papers 3.3 & 3.3A)

10. The Council were provided with an update for awareness from the Costs and Funding Committee. General background included:
- JAN 2021 – the Council noted the concerns raised and remitted this to the Costs and Funding Committee to amend the PEO Rules as required.
 - JUL 2022 - the UK member state submitted its plan of action to address the concerns raised.
 - SEP 2024 - the Cost and Funding Committee had set out their perspective on the individual concerns raised in the attached update (*Paper 3.3A*). The Committee paper was marked 'public' and it will be available for viewing online.
 - OCT 2024 – the UK member state was to provide its second update on its plan of action. DEFRA is collating that response and has requested a short extension from the UNECE to complete that work.
11. In terms of rule-making; members noted the changes made by the July 2024 rules instrument and the direction of travel for the one outstanding change; which will be progressed by the proposed Public Consultation (on extending the type of claims covered).
- 12. Members noted the content of paper 3A which can be viewed online.**

Item 3.4 – Public Consultation on using online intimation (Papers 3.34 & 3.4 A – D)

13. Members were invited to approve a public consultation on the continued use of online intimation, in advance of the pending expiry date of the Covid legislation.

The current operational approach has been in place since lockdown and the consultation makes three proposals to make that approach permanent:

- *Online intimation* - as the digital replacement for using the physical “the walls of court”;
- *Newspaper advertising* – will be changed from a mandatory decision to a discretionary judicial decision; and in due course
- *Petitions for Appointment of an Executor Dative* – will, subject to a law change, shift from ‘online intimation’ to ‘direct intimation’.

14. Members in attendance approved publication of the Public Consultation. Final approval will be subject to full Council approval by correspondence

Item 3.5 – Nautical Assessor (Paper 3.6)

15. The Council were invited to consider the proposal for amendment to Chapter 12 of the Rules of the Court of Session to remove the requirement to maintain and publish a list for Nautical Assessors.

16. Additionally it is proposed that the rules are amended to remove the distinction between a Nautical Assessor and Assessor. There will then be no restriction on any party calling a skilled witness.

17. Members present noted the proposal made and instructed the Secretariat to issue drafting instructions.

Item 3.6 – Attendance at Hearings

18. The Council were invited to note the data presented in paper 3.6. In summary, the data confirms that the courts are not receiving a disproportionate volume of motions to change from one mode of attendance to another.

19. Members noted that a further paper may follow, on whether there is a need to extend the default mode to other procedural codes.

20. Members noted the update.

Item 4: AOB

No other business was raised.

Item 5: Date of Next Meeting: 20 January 2025

**Scottish Civil Justice Council Secretariat
October 2024**