

PROMPTS FOR DISCUSSION

1. The Group Procedure Working Group

Following the introduction of Group Procedure a total of 8 group procedure cases are now underway: 6 with regard to defeat devices used to reduce diesel emission levels, 1 regarding Celtic Boys Club and 1 regarding tea pickers in Kenya. That caseload does now provide sufficient information to support an assessment of how the current “opt in” procedure works and to consider an extension to include “opt out” procedure. The Lord President has agreed the remit and membership of a Group Procedure Working Group that will be chaired by Lord Ericht. The first meeting will be scheduled in May / June 2025 and the views of practitioners in those 8 cases are being sought by 1 May 2025 to help assess the learning to date.

Members may wish to discuss the steps now being taken to consider that “opt out” option?

2. How to better support ‘open justice’

A “think tank” event was held in Parliament House on 22 April 2024. The outcome report was then published as the “Informing the future of Open Justice Report” in July 2024: https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/open-justice/informing-the-future-of-open-justice-in-scotland.pdf?sfvrsn=6a738260_1

Page 15 of that report summarises the 15 Action Areas, with the 3 immediate actions being:

- Extending the use of live streaming – that is in hand with the volume of cases now live streamed continuing to rise.
- Publishing a reporters guide – that document was published on 27 February 2025: <https://www.scotcourts.gov.uk/about-us/news/news/2025/february/reporters-guide-created-for-journalists/>
- More sheriff court judgments - during 2025 the sheriffs will adopt the same approach to publishing court opinions as judges - which is to “publish unless there is a good reason not to”. That will impact on a) the “writing time” of sheriffs and b) the time required from local court staff to undertake QA checks and upload the opinion.

Members may wish to discuss other areas such as:

- *Rolls of Court* – would the general public perceive that the information currently provided on upcoming cases is sufficient for their needs?
- *Attendance at Hearings* – access to the links needed to attend a virtual hearing are usually restricted to the parties but they can be made available on request; so is that subverting open justice?
- *Modes of Attendance (for procedural hearings)* - is the right balance being struck between virtual hearings facilitated by a judge from their chambers and hybrid hearings facilitated by a judge from a suitably equipped courtroom; and how does that impact on open justice?

3. Anticipating the impact of Artificial Intelligence

The Prime Minister has announced that AI is a priority for the UK Government and a Bill to support that ambition is expected to be laid later this year. That will inform the direction of travel for the UK and its likely impacts on court procedure in Scotland.

In Scotland AI does already provide a pragmatic opportunity to help automate 3 of the key functions involved in the operation of the courts (TRANSCRIBE / TRANSLATE / SUMMARISE). As a first step an “Automated Transcription Service” will be piloted by the SCTS over the coming year – which will transcribe “Evidence by Commission” hearings for use by the judiciary.

Members may wish to discuss the way AI may impact on the legal profession and court procedure?

4. Compliance with Article 8 of the Aarhus Convention

The Environmental Resource Centre for Scotland (ERCS) recently sent a complaint to the United Nations Economic Council for Europe (UNECE) alleging the SCJC is non-compliant with its obligations to support public participation in the development of its draft rules: <https://www.ercs.scot/news/scottish-civil-justice-council-reported-to-a-top-un-body-over-breach-of-international-environmental-law-press-release/>

The communication:

- Relates to the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2024 (SSI 2024/196).
<https://www.legislation.gov.uk/ssi/2024/196/contents/made>
- The ERCS has welcomed these 3 amendments and does not suggest making any changes to the content of those rules.

The alleged failure:

- Is that by not running another consultation before implementing the finalised wording of those 3 amendments the ERCS was denied the opportunity to remind the SCJC of what it already knows – which is that in addition to those 3 amendments there is a need to progress all of the Aarhus Concerns (*as narrated in UNECE decision VII/8s, and the accompanying 2021 ACCC Compliance Report*).

The response – the secretariat is currently preparing the “Observations on admissibility” in order to flag the information omitted from that ERCS communication such as:

Awareness of all Aarhus Concerns raised by the UNECE:

- The CAFC meeting of 30 September 2024 - reviewed a detailed update that demonstrates the SCJC is well aware of the detail of all UNECE non-compliance issues raised; which it continues to progressing through its ongoing Rules Review:
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/caf-committee-papers/30-september-2024/20240930---paper-3-2a---update-on-the-aarhus-concerns-for-scotland.pdf?sfvrsn=8c196192_1
- The CAFC minutes of 30 September 2024 - record the commitment made to prepare draft rules to support a Public Consultation on the extending the availability of PEOs to parties in a wider range of court proceedings
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/caf-committee-papers/30-september-2024/20240930---cafc---minutes.pdf?sfvrsn=e35fe674_1

Communication of the decision not to consult:

- The SCJC minutes of the 3 June 2024 - record a clear decision not to consult:
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-meeting-papers/20240603/20240603-scjc-minutes.pdf?sfvrsn=8806f364_1
- The SCJC press release of 28 June 2024 - conveyed the reasons for taking the decision:
[https://www.scottishciviljusticecouncil.gov.uk/news/2024/06/28/act-of-sederunt-\(rules-of-the-court-of-session-1994-amendment\)-\(protective-expenses-orders\)-2024](https://www.scottishciviljusticecouncil.gov.uk/news/2024/06/28/act-of-sederunt-(rules-of-the-court-of-session-1994-amendment)-(protective-expenses-orders)-2024)
- The Consultation Guidelines 2018 - require public authorities to have a clear purpose when consulting and “not consult for the sake of it”:
https://assets.publishing.service.gov.uk/media/5ae6d71ae5274a702130dc30/Consultation_principles.pdf

Members should note the ERCS communication to the UNEECE inadmissible?

5. The government response to requests for an Environment Court

In November 2024 – the Scottish Ministers made a statement to parliament on the effectiveness of environmental governance:

<https://www.gov.scot/publications/statement-effectiveness-environmental-governance-arrangements/documents/>

Whilst acknowledging the arguments made by NGOs - page 28 confirms that: “... *the Scottish Government does not see any strong argument for a change in the balance of parliamentary, administrative and judicial roles in decision making on environmental matters, or for the creation of a specialist court.*”

Members may wish to discuss?

6. Accessing judgments via the SCTS website

An update was made to the layout of the judgements page of the SCTS website in Mid-2024. Whilst that improved the experience for some when accessing judgments there were also some issues arising - the hyperlinks in all previous research reports from academics as well as the SLC and the SCJC were broken; and several pre 2017 opinions are yet to be reloaded. In response all hyperlinks in SCJC policy papers now make reference to the BAILII legal databases rather than the SCTS website.

Members may wish to share their own experience of this change?

7. Anticipating any future reorganisation of local authority boundaries

Whilst there are no current plans for a major reorganisation of the local authority boundaries, it is a subject that sometimes makes an appearance in political discussion.

The two questions that arise for the SCJC are:

- Whether there is a need to anticipate how that type of structural change might impact on sheriff court boundaries? and if so
- How would a consequential change to the sheriff court boundaries be made?

Option 1 – Is to retain the status quo:

- At present the boundary lines for each sheriff court district are defined in law by the outdated “wards” that existed for the local authorities 3 decades ago (*as it was 1995 when the last major reorganisation of local authorities took place*).

Option 2 - is to adopt GPS coordinates:

- In future GIS mapping software could be used to more accurately define the correct legal jurisdiction of each sheriff court district to a degree of accuracy of plus or minus 1 metre; and the potential benefits are:
 - It would future proof the ability to shift court boundaries in future if any significant population shifts, or property developments, were to justify a realignment of a specific sheriff court boundary:
 - The ability to define the correct legal jurisdiction of sheriff court district could be increased to a degree of accuracy of plus or minus 1 metre; and
 - It would enable court staff to check the legal jurisdiction for any given case:
 - Manually by viewing a highly accurate and up to date wall map for their own court district; or
 - Automatically if the functionality in ICMS was to be developed to support a straightforward post code search that was linked back to the most current GPS coordinates for the boundaries of that court.

Is the suggested use of GPS coordinates to provide a more modern legal definition of court boundaries an idea worth taking further at this time?