

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ANNUAL STRATEGY WORKSHOP**

MONDAY, 31 MARCH 2025, AT 10:30

Edinburgh Marriott Hotel Holyrood,
81 Holyrood Rd, Edinburgh EH8 8AU
(*Salisbury Suite, 1st floor*).

- Present:** Lord President (*Chair*)
Lady Carmichael
Fiona Drysdale KC
Thomas Docherty
Lord Ericht
Nicola Irvine
Lady Haldane
Lord Harrower
Colin Lancaster (*SLAB*)
Sheriff Martin-Brown
Iain MacRae (*attended by video*)
Sheriff McCartney
Riley Power (*SCTS – attending for Malcom Graham*)
Sheriff Principal Ross
Mandy Williams (*SG - attending for Denise Swanson*)
Sheriff Way
Lady Wise
- In attendance:** Rachel Grant (*LIT*)
Carolyn Magill (*LPPO*)
- Support:** Craig McCorkindale (*Secretariat*)
Sarah Jane McNicol (*Secretariat*)
Paula Preston (*Secretariat*)
Graeme Welsh (*Secretariat*)
- Apologies:** Malcom Graham (*SCTS*)
Denise Swanson (*SG*)

Item 1. Opening comments (*Chair*)

1. The Chair welcomed members to the fifty-seventh meeting of the Council and noted the apologies received. This meeting provided the opportunity for members to consider all 42 rules requests in the current pipeline and their

suggested additions to that list. The primary aim of the day was to establish a collective view on the work programme and set the priorities for the coming year.

- The Council agreed to publish the supporting background papers at Flag A to D. and not to publish the internal management reports 1, 2 and 3.

Item 2. Progress made with this year's work programme (2024-25):

- Members discussed the range of activities undertaken over the last year that had progressed the development of policy positions:

| WORKFLOW | PUBLICATIONS |
|---------------------|--|
| CONSULTATION PAPERS | Online Intimation - to replace the walls of court Simplified procedures - for divorce and dissolution Modernising the Signet |
| RESEARCH PAPERS | Research on the cost caps used in practice Research on the type of cases seeking a PEO |
| MONITORING REPORTS | Update on the Aarhus concerns for Scotland Annual update on the transfer of Tribunal Rules |
| PRACTICE NOTES | Practice Note 2 of 2024 – on Citizens Rights following withdrawal from the EU |

- Members discussed the 7 draft rules instruments the Council had proposed to the Court of Session for consideration and enactment during 2024-25:

| WORKFLOW | RULES INSTRUMENTS MADE & LAID |
|-----------------|---|
| REVIEW | Protective Expenses Orders (SSI 2024/196) |
| MODERNISE | Statutory Interveners (SSI 2024/353) |
| MAINTAIN | Hague 19 & currency conversion certificates (SSI 2025/XX) Nautical Assessors (SSI 2025/61) |
| REFORM | |
| COMPLY | UNCRC Compatibility & Devolution Issues (SSI 2024/195) and the Determination of Compatibility Questions Rules (SSI 2024/197) |
| FEES & EXPENSES | Objections in a Diet of Taxation (SSI 2024/323) |

- The above tables summarise the progress made during the current year which will be reflected in the SCJC Annual Report for 2024-25 when published.

Item 3. Agreeing the priorities for the coming year (2025-26):

3.1 SUGGESTED PRIORITIES:

6. Members noted the 42 rules requests carried forward and agreed the following as their 9 priority items to be progressed during the coming year:

| WORKFLOW | POLICY TOPIC |
|---|--|
| RUNNING CONSULTATIONS | Adding Simple Procedure Special Claims (SPSC) Extending PEOs to the sheriff court A simplified table of fees for Officers of Court |
| ANALYSING CONSULTATION RESPONSES | Online intimation / withdrawal of the walls of court Extension of simplified divorce Modernisation of the signet |
| FACILITATING WORKING GROUPS | Group Procedure Working Group |
| SSIs TO BE MADE & LAID | Inner House Rules Covid (Recovery & Reform) (Scotland) Act 2022 |

3.2 KEEPING THE SYSTEM UNDER REVIEW

7. The meeting considered the areas of the wider civil justice system that may provide either opportunities for change, or potential problems to be solved. The following points were noted from that discussion:

Public Education

To understand “the way the system works” the general public need the capability to access the information they need in multiple different ways. To support “justice being seen to be done” their understanding is now better supported by broadcasters filming trials within Scottish courtrooms. Members will consider other options.

Access to Data

The raw data captured and the way it has been converted into useable information does impact on the ability of Council to fulfil its statutory functions. The annual “Civil justice statistics in Scotland” report can only provide part of the answers needed, and the withdrawal of the annual survey on civil justice problems will have an impact. There is a need to identify those gaps that may materially impact on delivery of that function.

User Experience

The testing of user experience is a sizeable task. The current range of “user groups” is but one of the ways in which user feedback is being captured. Members considered how that feedback could be better utilised, along with the other potential channels that could be used to secure user input.

Party Litigants

The cost of living crisis has increased the proportion of sheriff court proceedings where party litigants are involved, particularly in family law actions. That upwards trend will continue to impact on the way the civil justice system works in practice.

Civil Online

The procedure requiring the mandatory use of Civil Online has now been in use for some time and raw data is being captured on the number of applications made, and the mode of application used (paper or online). Whilst members had received a summary of that data, there is now a need for a more in-depth analysis of the access to justice impacts that may arise.

8. The Council agreed to add a 'Rules Review' regarding the way in which the Mandatory use of Civil Online rules are working in practice.

3.3 PROMPTS FOR DISCUSSION

9. The meeting considered the areas of current practice and procedure that may provide opportunities for change, or potential problems to be solved. The following points arose from that discussion:

Group Procedure Working Group

Members noted the remit and membership of the new working group. Lord Erich updated members on the potential lessons learned from the 8 cases now underway in the Court of Session; the nature of decisions made in Competition Appeal Tribunal cases; the wealth of academic literature available on class actions and the option taken in the Netherlands where the court only becomes involved in approving the settlement reached (*rather than being involved in the proceedings from start to finish*). The 2 reclaiming motions being heard this week will be the first time the Inner House will provide its view on how the current rules work in practice.

Open Justice – Live Streaming

The judiciary view live streaming is a key way to “demystify the courts” for the general public. The next step will be the live streaming of criminal appeals.

Open Justice – Modes of Attendance

The modes of attendance rules were introduced at pace as part of the pandemic response, hence the need to pause and take stock of the way in which the available technologies are now being used. The concern is that for some parties a virtual hearing may diminish access to justice, rather than improve it. The absence of a definition of the difference between procedural and substantive hearings was a case in point - as a decision within a procedural hearing in an asylum action can bring the case to an end and remove all rights of challenge. The public are entitled to attend any hearing regardless of their reason for doing so. There is a need to ensure that the procedures used 'do not shut the public out'. The overarching aim is still to make the most of the technology available and members have no desire to go back to the pre-pandemic state of everything being held in person. It is, however, vital that all court hearings are open to the public in a real and meaningful sense. Further work is now required to ensure that can be achieved in practice.

Aarhus Convention Compliance Committee (ACCC)

The question underlying the ‘communication that’s been lodged with the ACCC is whether the general public was “*denied meaningful participation*” when the Council, in June 2024, chose not to run a consultation on the amendments made to the 2018 PEO Rules. The ACCC will meet in June 2025 and their agenda may include the “communication” (*initiating writ*) as lodged by the ERCS. If that communication satisfies the “de minimis” level under the convention the party (*the UK member state*) will receive notice (*intimation*) that it has 5 months in which to lodge its initial “observations on the admissibility of the communication” (*answers*) prior to then attending a procedural hearing on admissibility. To provide an informed response the Council will undertake reasonableness checks on the “public consultation process” it uses, and the “communication process”, to provide assurance that the reasonable expectations under article 8 of the convention are being met. In researching that SCJC response the secretariat will seek appropriate legal advice before providing a formal report to the Council.

10. The Council agreed to add a Rules Review exercise to assess whether the Modes of Attendance rules fully support access to justice.

Item 4. Considering the 42 rules requests carried forward:

11. Members noted the summary information as provided within the slide pack, and the further detail within the papers as circulated in advance.

Item 5. Closing comments (*Chair*)

12. The Lord President thanked members for the insights provided by their active participation in today’s event and closed the workshop.

ANNEX 1 – THE PROGRAMME OF WORK (For 2025/26)

EXISTING = request carried forward from 2023-24

ADDITION = request added during April 2025 to Feb 2025

NEW = request arising from the strategy day held on 31 Mar 2025

COURT RULES - 37 rules requests carried forward:

| Count | Status | Category | Description |
|-------|----------|-----------|--|
| 1 | Existing | Review | Personal Injury Pre Action Protocol |
| 2 | Existing | Review | Withdrawal of Agents (RCS Chap. 30) |
| 3 | Existing | Review | Inner House Rules |
| 4 | Existing | Review | Protective Expenses Orders (PEO's) |
| 5 | New | Review | Modes of Attendance Rules |
| 6 | New | Review | Mandatory use of Civil Online |
| 1 | Existing | Modernise | Lay representation, lay support and party litigants |
| 2 | Existing | Modernise | Pre Action Protocol - Clinical negligence |
| 3 | Existing | Modernise | Pre Action Protocol - Disease |
| 4 | Existing | Modernise | Caveats |
| 5 | Addition | Modernise | Electronic Recording of Evidence (<i>new item</i>) |
| 1 | Existing | Maintain | Public Interest Interventions |
| 2 | Existing | Maintain | Appointment of assessors under the Equality Act |
| 3 | Existing | Maintain | Extension of Simplified Divorce |
| 4 | Existing | Maintain | Historic Abuse – Nominal Defenders |
| 5 | Existing | Maintain | E-Motions |
| 6 | Existing | Maintain | Pursuers offers (for PI cases under £5k) |
| 7 | Existing | Maintain | Inhibition in execution |
| 8 | Existing | Maintain | Postal copies (<i>of documents served</i>) |
| 1 | Existing | Reform | Rules Rewrite (<i>the New Civil Procedure Rules</i>) |
| 2 | Existing | Reform | Simple Procedure Special Claims (SPSC) |
| 3 | Existing | Reform | Group Proceedings Part 2 (<i>opt out procedure</i>) |
| 4 | Existing | Reform | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 9 |
| 5 | Existing | Reform | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 10 |
| 6 | Existing | Reform | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 11 |
| 1 | Existing | Comply | Damages (Investment Returns and Periodical Payments) (S) Act 2019 |
| 2 | Existing | Comply | Civil Partnership (Scotland) Act 2020 |
| 3 | Existing | Comply | Children (Scotland) Act 2020 |
| 4 | Existing | Comply | Defamation and Malicious Publication (Scotland) Act 2021 |
| 5 | Existing | Comply | Domestic Abuse (Protection)(Scotland) 2021 |
| 6 | Existing | Comply | Coronavirus (Recovery and Reform) (Scotland) Act 2022 |
| 7 | Existing | Comply | Child Support (Enforcement) Act 2023 |
| 8 | Existing | Comply | Moveable Transactions (Scotland) Act 2023 |
| 9 | Existing | Comply | Hunting with Dogs (Scotland) Act 2023 |
| 10 | Existing | Comply | Trusts and Succession (Scotland) Act 2024 |
| 11 | Addition | Comply | Bankruptcy and Diligence (Scotland) Act 2024 |
| 12 | Addition | Comply | Judicial Factors (Scotland) Act 2025 |

FEES RULES - 4 rules requests carried forward:

| Count | Item | Category | Description |
|-------|----------|-------------------|--|
| 1 | Existing | Judicial Expenses | Fee structure - for Clinical Negligence PAP |
| 2 | Existing | Judicial Expenses | Fee structure - for Disease PAP |
| 3 | Existing | Regulated Fees | Simplified 'Table of Fees' for Officers of Court |
| 4 | Addition | Judicial Expenses | Reduction of Inclusive Charges – taxation rule 3.7 |

ANNEX 1 – THE FULL PROGRAMME OF WORK ...continued

EXISTING = request carried forward from 2023-24

ADDITION = request added during April 2025 to Feb 2025

NEW = request arising from the strategy day held on 31 Mar 2025

INQUIRY RULES - 1 rules request carried forward:

| Count | Item | Category | Description |
|-------|----------|----------|--|
| 1 | Existing | Maintain | To seek COPFS views (on the FAI rules) |

TRIBUNAL RULES - 2 items carried forward (to prepare for the pending transfer)

| Count | Item | Category | Description |
|-------|----------|-----------|---|
| 1 | Existing | Reform | To monitor the jurisdictions transferred (<i>per the 2014 Act</i>) |
| 2 | Existing | Modernise | To establish the judicial objectives (<i>for progressing a tribunals Rules Rewrite</i>) |