

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 21 JANUARY 2019 AT 10.30 AM
JUDGES' CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES**

Members Present: Lord President (Chair)
Sheriff Principal Abercrombie QC
Lord Boyd
Lynda Brabender QC (Advocate)
Kenneth Campbell QC (Advocate)
Joel Conn (Solicitor)
Employment Judge Joseph d'Inverno (LP member)
Elena Fry (Solicitor)
Gavin Henderson (Scottish Government)
Sheriff Hughes
Colin Lancaster (Scottish Legal Aid Board)
Brandon Malone (LP member)
Ian Maxwell (Consumer representative)
Lord Menzies
Sheriff Murphy
Lord Tyre
Jane Williams (Consumer representative)

In attendance: Nicola Anderson (SCTS)
Diane Machin (SCTS)
Craig McCorkindale (SCTS)

Support: Andrew Campbell (Head of Legal Secretariat, Lord President's Private Office)
Steven D'Arcy (Deputy Secretary, Scottish Civil Justice Council)
Roddy Flinn (Secretary, Scottish Civil Justice Council)
Inez Manson (Deputy Legal Secretary, Lord President's Private Office)
Mariel Kaney (Deputy Legal Secretary, Lord President's Private Office)
Lauren Keillor (Policy Officer, Scottish Civil Justice Council)

Apologies: Jacqueline Harris (Solicitor)
Eric McQueen (SCTS)

Item 1: Introduction, welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Eric McQueen and Jacqueline Harris.
2. The Chair welcomed Steven D'Arcy to his first meeting. Steven has recently taken up post as Deputy Secretary to the Scottish Civil Justice Council.
3. The Chair informed the Council that the normal oral update from SCTS, which was previously a standing item on the agenda, had been removed. The primary purpose of that update was to inform the Council of the key structural changes under the Making Justice Work Programme, which were now broadly in place.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

4. **The Council approved the minutes of the previous meeting.**

Item 2.2 – Activity since last meeting (Paper 2.2)

5. **The Council noted the progress that had been made on actions since the last meeting and the activity report on the work of the Council's Committees.**

Item 2.3 – Items by correspondence (Paper 2.3)

6. **The Council noted Paper 2.3, which provided a summary of the outcome of the following matter considered by correspondence after the last meeting:**

- ***Implementation of Taylor Recommendations***

Paper 2018/122 was issued to members on 10 December 2018, inviting members to approve:

- a) the publication of a summary report from the Costs and Funding Committee outlining work to date on implementation of the

recommendations contained in Chapters 2 to 4 of *Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland* ('the Review');

- b) Recommendation 30 of the Review being marked 'no further action'; and
- c) the publication of the *Analysis of Responses to the Council's Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors* from the Costs and Funding Committee on the Council's website.

Responses were invited by close of business on 17 December 2018. No substantive responses were received. The matter was approved by Council and the summary report, with recommendation 30 marked 'no further action, and the analysis of responses to the consultation have been published on the SCJC website.

Item 3: Proceedings

Item 3.1 - Committee membership (Paper 3.1)

- 7. The Council considered **Paper 3.1**, which invited members to consider and approve changes to the membership of the Family Law and Access to Justice Committees.
- 8. **The Council approved:**
 - **The appointment of Alison Reid to the Family Law Committee; and**
 - **The appointment of Council member Joel Conn to the Access to Justice Committee.**

Item 4: Work Programme

Item 4.1: Update from the Scottish Government on legislative developments (Oral)

- 9. Gavin Henderson provided the Council with an update on legislative developments from the Government. The Government continues to plan for Brexit. The Children (Equal Protection from Assault) Bill is at stage 1 of its parliamentary process. The Damages (Investment Returns and Periodical Payments) (Scotland) Bill was at stage 2 and that the Prescription (Scotland)

Act 2018 had received royal assent in December 2018.

10. A consultation on success fee agreements under the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 is due to close at the end of January 2019. A consultation is ongoing in relation to the law of defamation. The Scottish Government had committed to uplifting legal aid rates by 3% as of 01 April 2019.
11. **The Council noted this update.**
12. **The Government had agreed that its representative would provide a statement to the Family Law Committee on its progress with simplified divorce in Scotland, with a view to informing the Committee's work on this matter.**

Item 4.2 – Business Tracker (Paper 4.2)

13. The Council considered Paper 4.2, which provided an update on the work currently being considered by the Council and its Committees.
14. **The Council agreed that work to establish a new Judicial Rate of Interest should remain a priority for the upcoming year.**

Item 5: Justice System Reform - courts reform

Item 5.1 – Courts Reform Tracker (Paper 5.1)

15. **The Council noted Paper 5.1, which provided an update on the work being progressed by the Council under the Courts Reform agenda.**

Item 5.2 – Rules Rewrite Project Update (Paper 5.2)

16. The Council considered **Paper 5.2**, which advised that a decision had been taken to pause work on the Rules Rewrite Project for a period of at least 6 months. This decision was taken due to the Government having to target legal resources at preparing for a possible no deal Brexit. The consequence of that is that it is not currently possible for the Rules Rewrite Team to backfill vacancies as all staff in the project team are seconded from the Government.

17. The Rules Rewrite Project is a long term project and it is not envisaged that the delay would impact upon the project's overall delivery.

Item 6: Proposals for rules: Policy development

Item 6.1 – Hearing the Voice of the Child (Papers 6.1 and 6.1A-B)

18. The Council considered **Papers 6.1 and 6.1A-B**, which invited members to consider proposed amendments to Chapters 33 and 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session ('RCS') alongside improved and redesigned versions of the forms for intimation and seeking the views of the child in family actions (Forms F9, CP7 and 49.8-N).
19. The draft instrument and guidance were developed and approved by the Family Law Committee ('FLC') and are intended to bring procedural clarity to how these forms are used.
20. Inez Manson, Deputy Legal Secretary to the Lord President, provided the Council with an overview of, and background to, this item. The project had been ongoing for some time, but there were good reasons for this. The FLC had felt it was important to get it right.
21. In redesigning the forms, the FLC consulted with a number of organisations that work with and represent children and young people. Thanks to assistance from the Children's Parliament, Scottish Women's Aid and the Children and Young People's Commissioner Scotland, input from children and young people was also obtained, by way of a number of consultation sessions. A sub-group of FLC members then continued work on overhauling the text and layout of the forms, with a graphic designer being appointed to add colour and make the documents more child-friendly.
22. In addition to the initial task of creating new forms, the FLC decided to take the opportunity to go a step further and set out in rules the procedure to be followed when sending forms to children. The existing rules specify the form to be used, but are silent on how it should be sent, by whom, and at what point in proceedings. It was considered important to make provision about seeking the views of the child in situations where the principal proceedings have concluded and variation of decree is sought. All of these points are addressed in the draft instrument, which aims to change the culture and practice of hearing the views of the child in family actions.

23. **The Council:**

- **Approved the draft instrument for submission to the Court of Session for approval, subject to any typographical or stylistic changes;**
- **Agreed that the entire instrument should be commenced at the same time;**
- **Approved the draft guidance on completing the new forms and agreed that this may be published on the Council's website; and**
- **Agreed that no policy note was required to accompany this draft instrument.**

24. **The Council agreed that it was important that the new forms would eventually be able to be completed and submitted online by children. The Council discussed the potential complexity of enabling online submission for this type of form and agreed that the secretariat should discuss this matter with the Scottish Courts and Tribunals Service.**

Item 6.2 - Computer evidence in the sheriff court (Papers 6.2, 6.2A-B)

25. The Council considered **Papers 6.2 and 6.2A-B**, which invited members to consider revoking the Act of Sederunt (Computer Evidence in the Sheriff court) 1969 and the Act of Sederunt (Computer Evidence in the Sheriff Court Amendment) 1970.
26. The rationale for the amendments made by the draft rules at **Paper 6.2B** is that these Acts of Sederunt prescribe certain procedures for the admission of evidence in civil proceedings in the sheriff court in relation to statements produced by computers that are now out of date.
27. **The Council:**
- **Approved the draft rules in Paper 6.2B for submission to the Court of Session subject to any stylistic or typographical amendment; and**
 - **Agreed that no policy note was required to accompany these draft rules.**

Item 6.3 - Signing of petitions and answers – Court of Session (Paper 6.3)

28. The Council considered **Paper 6.3**, which invited members to consider a request made by the Court of Session Asylum and Immigration User Group seeking a change to the RCS to permit a solicitor to sign a petition or answers in lieu of Counsel in certain circumstances (namely where Counsel is not physically available to sign his or her petition or answers prior to lodging.)
29. **The Council considered Paper 6.3 and instructed draft rules to be prepared for consideration in due course.**

Item 7: Proposals for rules: implementation of legislation

Item 7.1 - Modernisation of insolvency rules (Papers 7.1, 7.1A-H)

30. The Council considered **Papers 7.1 and 7.1A-H**, which invited members to consider a joint policy proposal from the Accountant in Bankruptcy ('the AIB') in Scotland and the Insolvency Service ('the IS') in England for new rules of court in order to implement two new statutory instruments.
31. Following the commencement of a set of recast insolvency rules for England and Wales on 6 April 2017, the AIB and the IS agreed to take forward a joint project to modernise and consolidate the rules in Scotland. Because of the devolution position for insolvency law, neither the Scottish nor the UK Governments have legislative competence to draft all the rules relating to insolvency in Scotland. Accordingly, the project required to be undertaken jointly by the AIB and the IS.
32. The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 and the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 represent the output from this project. Both of these instruments will come into force on 06 April 2019.
33. The Council discussed the two new instruments and agreed that the most pressing task in relation to the rules of court will be to update them to take account of the repeal of the Insolvency (Scotland) Rules 1986 and its replacement with the new rules.
34. Joel Conn informed the Council that he had been contacted by a representative of the Institute of Chartered Accountants in Scotland ('ICAS'), who are one of the regulators of insolvency practitioners, regarding issues arising from the appointment of Court Reporters on remuneration in corporate insolvency

matters. Joel had passed a note of the contact from ICAS to LPPO for further discussion. **The Council agreed that in the restricted time available to draft the new corporate insolvency rules, it was unlikely that there could be any material changes to the rules on Court Reporters within them at this time, but agreed that the issues should be followed up by the Secretariat.**

35. **The Council instructed the preparation of rules of court taking account of the two new modernising instruments.**

Item 7.2 - Sanctions and Anti Money Laundering Act 2018 (Papers 7.2, 7.2A-C)

36. The Council considered **Papers 7.2 and 7.2A-C**, which invited members to consider and approve draft rules in relation to the Sanctions and Anti Money Laundering Act 2018 ('the 2018 Act').
37. At its November 2018 meeting, the Council considered a policy request from the Foreign and Commonwealth Office in relation to the 2018 Act, which provides a legal framework to enable the United Kingdom Government to make sanctions regulations to implement UN sanctions and impose autonomous sanctions. The 2018 Act also provides powers for Ministers to designate persons upon whom sanctions measures (such as travel bans and asset freezes) are to be applied.
38. In November 2018 the Council instructed the preparation of draft rules for handling applications under Section 38 of the 2018 Act, which should be similar to those in Chapter 96 RCS and are to incorporate provisions for the non-disclosure of sensitive material and approved the revocation of Chapter 101 of the RCS, subject to an appropriate savings clause.
39. **The Council considered the draft rules in relation to the 2018 Act and approved these for submission to the Court of Session, subject to any typographical or stylistic amendments.**

Item 8: AOCB

40. **The Council approved the following papers for publication:**
- **Paper 2.2 (Activity since last meeting);**
 - **Paper 2.3 (Items by correspondence); and**
 - **Paper 3.1 (Committee membership)**
41. **The Council discussed a [report on Alternative Dispute Resolution](#) which**

had recently been published by the Civil Justice Council in England and Wales and noted that the report was due to be considered by work stream 5 of the Rules Rewrite Project at a meeting scheduled for 11 February 2019.

42. The Council asked the Secretariat to give consideration to a strategy day or meeting to allow members, with input from Committees, to take forward planning for the coming year.

Item 9: Dates of future meetings

43. The dates of future meetings were noted:

- Monday 18 March 2019 at 10.30 am
- Monday 13 May 2019 at 10.30 am
- Monday 08 July 2019 at 10.30 am
- Monday 09 September 2019 at 10.30 am
- Monday 18 November 2019 at 10.30 am

**Scottish Civil Justice Council Secretariat
January 2019**

THIS PAGE IS INTENTIONALLY BLANK