

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 23 JANUARY 2017 AT 10 AM

APEX WATERLOO PLACE HOTEL, EDINBURGH

MINUTES

Members Present: Lord President (Chairman)
Colin Lancaster (Chief Executive, SLAB)
Jan Marshall (Scottish Ministers' representative)
Lord Menzies
Lord Tyre
Lord Boyd
Sheriff Principal Abercrombie
Lynda Brabender (Advocate)
Kenneth Forrest (Advocate)
Paul Reid (Solicitor)
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Ian Maxwell (Consumer representative)
Jane Williams (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Brandon Malone (LP member)

In attendance: Jane MacDonald (SCTS Legislation Implementation Team)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Support: Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)
Andrew Campbell (Deputy Legal Secretary, Lord President's Private Office)
John Thomson (Deputy Legal Secretary, Lord President's Private Office)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
David Ross (Policy Officer, Scottish Civil Justice Council)

Apologies: Eric McQueen
Sheriff Hughes
Sheriff Murphy

Absent: Gillian Prentice (Deputy Principal Clerk of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Eric McQueen (Chief Executive, SCTS), Sheriff Hughes and Sheriff Murphy.
2. The Council agreed not to publish the following papers: 2.2; 2.3; 3.1; 3.1A, 3.2; 3.2B; 3.3; 4.3; 5.1; 5.1A-B; 6.1; 6.1A-B; 6.2; 6.2A-B; 6.3; 6.3A-C; 6.4 and 6.4A.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. Ian Maxwell suggested amendments to the minutes at paragraph 16 and Jan Marshall suggested amendments to the minutes at paragraph 10.
4. **Members agreed the amendments and approved the minutes subject to the agreed amendments.**

Item 2.2 – Activity since last meeting (Paper 2.2)

5. **Members 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. **Members noted Paper 2.3** which provided a summary of the outcome of consideration given to the following four matters raised by correspondence since the last meeting:

A. Bankruptcy

- Papers were issued to members on 27 October 2016 inviting the Council to approve draft rules which make amendments to the recent Bankruptcy instruments which were made on 6 October. The amendments address drafting issues raised by the Scottish Parliament's Delegated Powers and Law Reform Committee and clarify transitional arrangements and correct some errors.
- **The rules were included in a miscellaneous instrument which was made on 10 November 2016 and came into force on 28 November 2016.**

B. Miscellaneous instrument – amendments relating to the new Simple Procedure and Ordinary Cause Personal Injury Rules

- Papers were issued to members on 02 November 2016 inviting the Council to consider and approve a draft instrument which makes amendments relating to the new Simple Procedure as well as a minor typographical amendment to the Ordinary Cause Personal Injury Rules.

The rules were included in a miscellaneous instrument which was made on 10 November 2016 and came into force on 28 November 2016.

C. Amendment to Court of Session Form 40.2

- Papers were issued to members on 20 December 2016 inviting the Council to consider and approve draft rules amending Court of Session Form 40.2 to require an applicant appealing from the Sheriff Appeal Court to the Court of Session to show the test set out in Section 113 of the Courts Reform (Scotland) Act 2014 is met.
- **The rules were made on 10 January 2017 and come into force on 07 February 2017.**

Since the last meeting, the Council was also consulted by the Court of Session in relation to the following instrument:

D. Act of Sederunt (Sheriff Court Rules Amendment) (Electronic Authentication) 2016

- The instrument amends the Ordinary Cause Rules 1993 and the Sheriff Court Bankruptcy Rules 2016, to extend electronic authentication to ordinary causes and certain bankruptcy warrants. It was made on 13 December 2016 and came into force on 15 December 2016.

Before making the instrument, the Court of Session consulted with Scottish Civil Justice Council in accordance with section 104(5) of the Courts Reform (Scotland) Act 2014 and the Council confirmed that it was content with the approach.

Item 3: Proceedings

Item 3.1 – Publication Scheme (Papers 3.1 and 3.1A)

7. Members were advised that the Council's Publication Scheme and Guide to Information requires to be revised to ensure compliance with the Scottish Information Commissioner's latest Model Publication Scheme, which was produced on 29 March 2016.

8. Members approved the proposed revisions to the Council's Publication Scheme and Guide to Information.

Item 3.2 Review of Standing Orders (Papers 3.2 and 3.2A-B)

9. Paper 3.2 asked members to consider revisions to the Council's Standing Orders in order to bring them up-to-date in terms of current processes, for example, in relation to the issuing of papers.

10. Members approved the proposed revisions to the Council's Standing Orders.

Item 3.3 Review of register of interests (Paper 3.3)

11. **Paper 3.3** reminded members of their requirement to declare any interests they may have that are relevant to the work of the Council.

12. Members were invited to liaise with the Secretariat in relation to any updates required.

Item 4: Work Programme

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

13. Jan Marshall updated the Council on legislative developments. On primary legislation, it was noted that the Scottish Parliament's Justice Committee will soon take evidence as part of its stage one consideration of the Limitation (Childhood Abuse) Bill and that bills to implement (1) the Scottish Law Commission's report on third party rights in contracts and (2) Sheriff Principal Taylor's review of costs and funding in civil litigation had been announced as part of this year's Programme for Government. On implementation of Acts of the Scottish Parliament, it was noted that work continues on finalising the implementation of the Courts Reform (Scotland) Act 2014 and that work is progressing on implementation of the Tribunals (Scotland) Act 2014. Finally, the SCJC's consultation on draft rules for fatal accident inquiries closes on 23 January: the intention is that the Inquires into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 will be brought into force in due course at the same time as the court rules.

Item 4.2 – Update from SCTS on Making Justice Work programme of reform and Shaping Scotland's Courts (Oral)

14. Craig McCorkindale updated the Council on the Making Justice Work programme of reform. In particular, he advised that the Scottish Courts and Tribunals Service's Integrated Case Management System ("ICMS") was updated for the launch of the Simple Procedure Rules and the new Sheriff Court Fees Order on 28 November 2016. Courts experienced an increase in submissions of summary cause and small claims cases prior to the launch of Simple Procedure followed by a lull after the new rules commenced. The volume of Simple Procedure cases is now

increasing. Work continues to develop ICMS for roll-out in the Court of Session and the launch of the online portal later this year. In relation to tribunals, work is also underway to transfer the administrative support function for the Scottish Land Court to the Scottish Courts and Tribunals Service.

Item 4.3 – Business Tracker (Paper 4.3)

15. **The Council noted Paper 4.3 which provided an update of the Council's work.**

Item 5: Justice system reform: Rules rewrite

Item 5.1 – Update from the Rules Rewrite Drafting Team (Papers 5.1 and 5.1A-B)

16. Kenneth Htet-Khin, Head of Rules Rewrite Drafting Team, provided an update on the work of the Rules Rewrite Drafting Team. In particular, he advised that consultation on the draft FAI Rules closes on 23 January 2017 and that several responses have been received to date. On Simple Procedure, it was noted that no serious issues with the rules have been reported since the commencement date. A readability exercise in relation to the Simple Procedure (Special Claims) Rules on heritable property took place on 18 January 2017. A focus group with key stakeholders in the housing sector took place on 19 January. A similar focus group in relation to the special claims rules on personal injury claims will take place on 24 January with stakeholders in the personal injury sector. In respect of the Rules Rewrite Project, the Information and Communications Technology Committee will consider a Rules Rewrite Discussion Paper on ICT in the Civil Courts on 06 February 2017. The paper will then be considered by the Rules Rewrite Committee on 21 February 2017.

Item 6: Proposals for rules

Item 6.1 – Human Trafficking and Exploitation (Scotland) Act 2015 (Papers 6.1 and 6.1A-B)

17. Roddy Flinn introduced these papers, which relate to policy proposals from the Scottish Government requesting new rules of court and prescribed forms in order to implement the Human Trafficking and Exploitation (Scotland) Act 2015. The Council considered this matter at its last meeting and agreed that rules should be prescribed in relation to applications for the variation, renewal and discharge of Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). The draft rules also include provision to apply the Mutual Recognition of Protection Measure Rules to TEPOs and TEROs.

18. **The Council considered and approved the draft rules and agreed that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 6.2 – Fees for Pursuers’ Offers (Papers 6.2 and 6.2A-B)

19. **Paper 6.2** invites the Council to consider and approve a draft Act of Sederunt provided at **Paper 6.2A** amending the Court of Session and Sheriff Court Tables of Fees in order to take account of the proposed introduction of Pursuers’ Offers. Draft rules relating to Pursuers’ Offers were approved by the Council at its last meeting. It is intended that this draft instrument and the Pursuers’ Offers rules will be commenced at the same time.

20. **Members considered and approved the draft rules and agreed that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 6.3 Counter-Terrorism and Security Act 2015 (Papers 6.3 and 6.3A-C)

21. **Paper 6.3** invites the Council to consider and approve draft rules (**Paper 6.3A**) amending the Rules of the Court of Session to facilitate Temporary Exclusion Orders (“TEOs”) being made under the Counter-Terrorism and Security Act 2015 (“the 2015 Act”). The Council previously considered a policy request from Scottish Government and instructed the LPPO to prepare draft rules.

22. Andrew Campbell spoke to the draft rules and invited members to consider whether additional provision for the specific functions of a special advocate was required.

23. **The Council considered and approved the draft rules, confirming that no additional provision should be included for the specific functions of a special advocate. It and agreed that the draft rules be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 6.4 Scotland’s Attractiveness for Commercial Dispute Resolution (Papers 6.4 and 6.4A)

24. **Paper 6.4** invites members to note the receipt of a paper prepared by Brandon Malone at **Paper 6.4A** in relation to improving Scotland’s offering as a seat of commercial dispute resolution. Mr Malone provided members with an overview of **Paper 6.4A**. He advised that the purpose of the paper is to explore what could be done to improve the attractiveness of Scotland as a forum for commercial dispute resolution. He also noted that in May 2020, the Scottish Arbitration Centre is hosting the International Council for Commercial Arbitration Congress in Edinburgh. It is

expected that over 1,200 of the world's leading international commercial dispute lawyers will be in Edinburgh for the Congress.

25. **Members noted the terms of Paper 6.4A and agreed to consider it further at a subsequent Council meeting.**

Item 7: A.O.C.B.

Item 7.1 Changes to Committee membership (Oral)

26. **Members approved the following changes to Committee membership:**

- **Access to Justice – SLAB representative and alternate representative:**
Anne Dickson, Director of Strategic Development, to replace Colin Lancaster as the nominated SLAB representative and Colin Lancaster to become the alternate representative.
- **Costs and Funding – SG representative:**
Hamish Goodall to be the new SG representative with Gery McLaughlin as the alternate.
- **ICT – SCTS representative:**
Claire Taylor, IT Director, to replace Richard Maconachie as both the alternate and papers member for SCTS.
- **Family Law Committee – SG representative:**
Tom McNamara to replace Robert Marshall as the SG alternate nominee.

Item 7.2 Accessing meeting papers via the members' portal (Oral)

27. Mandy Williams advised that a new method of uploading papers for Council meetings to the members' portal was adopted for this meeting. This involved uploading the papers as one document rather than as separate ones. This is in order to improve accessibility for members by reducing the time required to print papers. Feedback from members suggested that difficulty in accessing or printing the single document may have been restricted to those attempting to do so via the internal SCTS network. No problems were reported by those accessing the papers from an external network.

28. **The Secretariat will monitor the performance and capacity of the members' portal.**

29. No other business was raised.

Item 8: Dates of future meetings

30. Members noted the dates of future meetings:

- Monday 20th March 2017 at 10 am
- Monday 29th May 2017 at 10 am
- Monday 10th July 2017 at 10 am
- Monday 02nd October 2017 at 10 am
- Monday 20th November 2017 at 10 am

Scottish Civil Justice Council Secretariat

January 2017