

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
MONDAY 25 JANUARY 2016 AT 10 AM  
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

**MINUTES**

**Members present:** Lord Menzies (Chair)  
Eric McQueen (Chief Executive, SCTS)  
Colin Lancaster (Chief Executive, SLAB)  
Jan Marshall (Scottish Ministers' representative)  
Lord Tyre  
Sheriff Principal Abercrombie  
Sheriff Hughes  
Andrew Stewart QC (Advocate)  
Kenneth Forrest (Advocate)  
Paul Reid (Solicitor)  
Jacqueline Harris (Solicitor)  
Ian Maxwell (Consumer representative)  
Prof. Fran Wasoff (LP member)

**In attendance:** Craig McCorkindale (Director for Civil Courts Reform, SCTS)  
Jane MacDonald (SCTS Policy and Legislation Branch)  
Gillian Prentice (Deputy Principal Clerk of Session)

**Support:** Roddy Flinn (Secretary to the Scottish Civil Justice Council)  
Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)  
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)  
Anne Hampson (Policy Officer, Scottish Civil Justice Council)

**Apologies:** Lord President (Chair)  
Eric Baijal (Solicitor)  
Employment Judge Joseph d'Inverno (LP member)

**Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and noted apologies from the Lord President, Eric Baijal and Joseph d'Inverno.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.1, 4.3, 4.4, 4.4A, 5.1, 6.1, 6.1A, 6.2, 6.2A-B, 6.3, 6.3A, 6.4 and 6.4A.

**Item 2: Previous meeting**

*Item 2.1 – Minutes of previous meeting (Paper 2.1)*

3. **Members agreed the minutes from the previous meeting.**

*Item 2.2 – Progress of actions from previous meetings (Paper 2.2)*

4. Mandy Williams informed members that strategy meeting will be held on the 14 March 2016. This is a scheduled Council meeting and some time will be spent on the routine agenda before moving on to the strategy meeting.
5. **Members noted the date of the strategy meeting and the progress that had been made on actions since the last meeting.**

*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 matters raised by correspondence since the last meeting:

A. Sheriff Appeal Court (civil) – Fees for solicitors

Following consideration and approval of the draft fees instrument by correspondence issued 30 October 2015 a further paper reflecting on the clarity of the advice initially provided was considered by the Costs and Funding Committee on 16 November. The Committee was content that no substantive changes were required.

However, the Committee did agree that, for consistency with the Sheriff Appeal Court Rules, the term “advocate” should be used in place of “counsel”. As the Council had already approved the draft fees instrument, the instrument was made by the Court of Session with modifications to give effect to the Committee’s views. The instrument was made on 17 November 2015 and came into force on 01 January 2016. A note of the modifications made was circulated to members for information.

B. Sheriff Appeal Court (civil) – Consequential provisions

Council members considered by correspondence papers, presenting draft consequential and savings provisions. The rules were and the instrument was made on 08 December 2015, subject to modification, and came into force on 31 December 2015 and 01 January 2016. A note of the modifications made was circulated to members for information advising of modifications to Paragraphs 9(7) and 19(5).

**Item 3: Proceedings**

*Item 3.1 – Membership (Paper 3.1)*

7. Members were invited to approve the appointment of Stewart Mullan to the Costs and Funding Committee. **Members approved this appointment.**
8. The Council previously agreed that in relation to the expiry of tenure for inaugural members, it would be desirable to ensure a balance between continuity and the benefit of a fresh perspective within the Council. The Secretariat has written to those members, excluding judicial members, whose tenure periods are due to end in May 2016. Members were advised that the Lord President will shortly be considering a paper in relation to membership of the Council. Following that consideration, members affected will be notified directly of the position.

**Item 4: Work Programme**

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

9. Jan Marshall, Scottish Government, provided members with an update on legislative developments in the Scottish Parliament. The Apologies (Scotland) Bill lodged by Margaret Mitchell, MSP completed Stage 3 on 19 January 2016 and the Succession (Scotland) Bill is due to complete Stage 3 on 28 January

2016 following an evidence session on 26 January 2016 on amendments recently lodged regarding caution. The Inquires into Fatal Accidents and Sudden Deaths etc (Scotland) Bill completed Stage 3 on 10 December 2015 and it is likely that the Act will be implemented towards the end of this year. The Bankruptcy (Scotland) Bill is due to complete Stage 1 by 5 February 2016. In relation to the Human Trafficking and Exploitation (Scotland) Act, the first commencement order is to be laid by the end of March 2016. The next tranche of implementation of the Courts Reform (Scotland) Act is likely to include the provisions in the Act concerning vexatious litigants and extended interdicts and the phased implementation of the Tribunals (Scotland) Act 2014 is currently planned to commence later this year with a suite of SSIs to bring the housing jurisdiction within the new tribunals structure. The consultation 'Review of Civil Partnership' closed on 15 December 2015 and the responses are currently being considered.

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

10. Craig McCorkindale provided members with an update on the Making Justice Work Programme. The Sheriff Appeal Court (criminal) and the all-Scotland Sheriff Personal Injury Court came into effect on 22 September 2015 and subsequently the Sheriff Appeal Court commenced its civil jurisdiction on 01 January 2016. Recruitment of the new tier of Summary Sheriffs has progressed and they will start to take up post from April 2016 onwards. Other work has largely focussed on the ICMS project which is currently in its beta phase - it aims to deliver the "must have" functionality by the end of February 2016, and will move onto the "nice to have" functionality from March 2016 onwards. The project team undertook a significant amount of staff engagement before Christmas and are now engaging more intensively with nominated members of the judiciary. October 2016 remains the target date for implementation.

*Item 4.3 - Business Tracker (Paper 4.3)*

11. Section G of the tracker had been updated since the last meeting to incorporate the communications planner. Mandy Williams advised the Council that the new Newsletter 'Update' was launched on 07 January this year and was well received. **Members recorded their thanks in relation to this positive development and noted the progress of work as outlined on the Business Tracker. The new newsletter 'Update' was considered to be attractively presented and helpful.**

*Item 4.4 – Winter Tour (Papers 4.4 and 4.4A)*

12. Paper 4.4A provided a summary of the background to the winter tour events, the content of the event and the post event work that has taken place. Mandy Williams informed the Council that overall feedback from the individual events indicated that the tour had been successful in raising the profile of the Council and its functions as well as its ongoing work programme. Mandy advised that it is hoped that the creation of the newsletter will build on this success by regularly informing stakeholders of the work of the Council and its committees.

- 13. Members noted the report summarising the Winter Tour event.**

**Item 5: Rules Rewrite**

*Item 5.1 – Rules Rewrite: update (Oral and Paper 5.1)*

14. Kenny Htet-Khin provided an update on the Rules Rewrite Project. In relation to Judicial Review Lord Boyd had issued the first published refusal of permission. Work is ongoing on personal injury pre-action protocols and simple procedure rules. A draft protocol for personal injury claims under £25 000 is due to be considered by the PI committee on 1 February. Two responses have been received so far to the consultation on the core simple procedure rules which closes 02 March 2016. A simple procedure readability exercise, involving participants with a non-legal background, will take place on 26 January and a Focus Group involving in-court advisers has also been arranged. The team are preparing rules to support the Bankruptcy Consolidation Bill, a Bill presently proceeding through the Scottish Parliament. They are also preparing Rules to support the recently enacted Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act. A scoping paper on taking forward the rules rewrite work has been approved by the Rules Rewrite Committee and will be presented to the Council for approval in due course. A wash-up meeting has been scheduled for 08 February 2016 to discuss issues which have come up in relation to the instruction process for new rules.

- 15. The Chair requested that the 'Update' should continue to advise that feedback on the practical workings of the rules would be welcome and he**

**recorded his thanks to everyone giving their time to implement them. Members noted the oral update and that provided in the activity tracker Paper 5.1**

**Item 6: Proposals for rules**

*Item 6.1 – Child Welfare Reporters – Civil Partnership Actions (Papers 6.1 and 6.1A)*

16. The Council considered the draft rules at **Paper 6.1A** which make provision for the appointment of Child Welfare reporters in civil partnership actions. Similar provisions came into force on 26 October 2015 in relation to family actions in the Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) 2015. Roddy Flinn advised that the rules were proposed in the interests of consistency and equality.
- 17. Members considered the draft rules and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

*Item 6.2 –Postal Administration Rules (Scotland) 2016 (Papers 6.2 and 6.2A-B)*

18. Roddy Flinn spoke to these papers. He advised that the proposals in Paper 6.2A are essentially as a result of the privatisation of the Royal Mail and are to ensure that the universal postal service is maintained in the event that a company providing the service becomes insolvent. It appears that amendment is required to Chapter 74 of the Rules of the Court of Session which already provides for a special administration scheme for energy companies.
- 19. Members confirmed that they were content that draft rules be prepared, and circulated by correspondence in order to ensure that they can be submitted to the Court of Session for consideration and, if need be, brought into force in April 2016.**

*Item 6.3 – Rules of the Court of Session – Inner House Cases (Papers 6.3 and 6.3A)*

20. Kenny Htet-Khin spoke to these papers. He explained that the rules give effect to proposals received from the Inner house User Group. They make provision for the reduction in the number of documents to be lodged with the court and provided to every other party and remove interlocutors refusing a sist from the list of interlocutors that may be reclaimed against without leave.
- 21. Members considered the draft rules at Paper 6.3A and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

*Additional issue - Inner House (No papers)*

22. Another issue raised by the Inner House User Group was in relation to the requirement for an application for leave to appeal to the Inner House or the UK Supreme Court to be signed by Counsel even in cases where the person has been conducting the case themselves. This has resulted in some people being refused the right to appeal. This issue could be remedied by making a short amendment to the rules which could be included in another instrument being made anyway. The Rules Rewrite Committee has agreed to consider an amendment by correspondence and the Council was invited to consider whether it too would consider such an amendment by correspondence.
- 23. Members confirmed that, following consideration of draft rules by the Rules Rewrite Committee, they were content to consider them by way correspondence.**

*Item 6.4 – Amendments to Chapter 46 of Part 3 of the Summary Applications Rules (Papers 6.4 and 6.4A)*

24. Roddy Flinn spoke to these papers. He explained that the draft instrument makes corrections, which were flagged in relation to the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015, to the Summary Application Rules.
- 25. Members considered the draft corrective rules at Paper 6.4A and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force as soon as possible.**

**Item 7: A.O.C.B.**

26. When the Costs and Funding Committee met on 16 November 2015, it instructed draft rules to be prepared for consideration by the Council in relation to uplift in Sheriff Officers and Messengers at Arms. This was agreed as an interim

measure whilst the Committee continues to research methodologies for reviewing fees generally. Draft rules are still being prepared and it is intended to circulate the rules by correspondence to allow the instrument to be brought into force as soon as possible.

**27. Members confirmed that they were content that draft rules be prepared, and circulated by correspondence in order to ensure that they can be submitted to the Court of Session for consideration and brought into force prior to the dissolution of Parliament.**

**28. The Council recorded its congratulations to the Lord President on his appointment.**

**29. The Chair advised that the strategy meeting, to be held on 14 March 2016, is to inform the Council's Annual Programme and discussion around this would take place with the Lord President prior to the meeting.**

**Item 8: Dates of future meetings**

30. Members noted the dates of future meetings:

- Monday 14 March 2016 at 10 am
- Monday 16 May 2016 at 10 am
- Monday 11 July 2016 at 10 am
- Monday 03 October 2016 at 10 am
- Monday 21 November 2016 at 10 am

**Scottish Civil Justice Council Secretariat  
January 2016**