

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 24 NOVEMBER 2014

Members present: Lord President (Chairman)
Lord Menzies
Lord Tyre
Sheriff Principal Stephen
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)
Kay McCorquodale (Scottish Ministers' representative)
Andrew Stewart QC (Advocate)
Kenneth Forrest (Advocate)
Eric Baijal (Solicitor)
Jacqueline Harris (Solicitor)
Paul Reid (Solicitor)
Ian Maxwell (Consumer representative)
Lauren Wood (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Prof. Fran Wasoff (LP member)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (SCS Policy and Legislation Branch)

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

Apologies: Sheriff Abercrombie QC

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present, introducing Jacqueline Harris and Paul Reid, who had recently been appointed as new SCJC members, and noted apologies from Sheriff Abercrombie.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.1, 4.4, 5.2, 5.2A, 5.3, 5.3A, 5.3B, 6.1, 6.1A, 6.1B, 6.2, 6.2A, 6.3, 6.3A, 6.4, 6.5, 6.5A and 6.5B.

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 meeting [Paper 2.2]

4. **Members noted the progress that had been made on actions since the last meeting.**
5. Ian Maxwell indicated that the model of the Bar Reporters Working Group was an interesting example on how work in relation to rules changes could be moved forward and that there were other areas which could be addressed in a similar way. **The Chairman invited Ian to submit a proposal.**
6. The creation of a private area for members within the SCJC website was discussed and members were asked to consider whether it was still required. **It was agreed that Secretariat should liaise with the web team to develop a business case to explore if this was cost effective and whether there were any alternative options with a view to reverting to the Council on this matter at a subsequent meeting.**

Item 2.3 – Items considered by correspondence [Paper 2.3]

7. 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. Draft rules to amend the Rules of the Court of Session and civil proceedings in the sheriff court relating to the Land Registration etc. (Scotland) Act 2012 were considered by correspondence and submitted to the Court of Session. The Rules were made on 5 November come into force on 8 December.
 - B. The SCJC was invited to submit written evidence to the Justice Committee on the Draft Budget 2015-16. Following comments from members, a response was issued on 30 October. Members were asked to consider whether the SCJC should decline to respond to future calls for evidence as a matter of course and different views were expressed.
8. **Following discussion, Members agreed that, while the Council should not routinely respond to calls for evidence on the Draft Budget, it should reserve the right to do so where members consider it appropriate.**

Item 3: Proceedings*Item 3.1 – Committee Membership [Paper 3.1]*

9. The Chairman informed members that he was recommending solicitor appointments to the Rules Rewrite Committee, the Access to Justice Committee, the ICT Committee and, to fill the previously identified gap in membership, the appointment of a personal injury practitioner with experience in pursuer reparation to the Costs and Funding Committee.
10. **Members approved the solicitor appointments and noted the Chairman's intention to revert to the SCJC regarding the appointment of a sheriff member to the ICT Committee at a later date.**

Item 4: Work programme*Item 4.1 – Update from the Scottish Government on legislative developments [Oral]*

11. Kay McCorquodale provided members with an update on progress in relation to the Courts Reform (Sc) Act 2014, which had received Royal Assent on 10 November, the Legal Writings (Counterparts and Delivery) (Sc) Bill which was due to proceed to its Stage 1 Debate on 25 November, the publication on 21 November of the SG's analysis of the responses to the consultation on proposals to reform Fatal Accident Inquiries Legislation, the lodging on 20 November of the final proposal for a Inquiries into Deaths (Scotland) Bill by Patricia Ferguson MSP; and the implementation of the Marriage and Civil Partnership (Sc) Act 2014.
12. **Mrs McCorquodale explained in particular that the Marriage and Civil Partnership (Sc) Act 2014 was being implemented in stages and a conversion from a civil partnership into a marriage would be possible administratively from 16 December with the first same sex marriage ceremonies being able to take place from 31 December 2014. She also advised that Regulations under section 2(2) of the European Communities Act 1972 were to be laid on 26 November to implement the provisions of EU Regulation 606/2013 on Mutual Recognition of Protection Measures in Civil Matters and that a proposed consultation in relation to the Extension of Simplified Divorce was likely to be issued early next year**

Item 4.2 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland's Courts [Oral]

13. Craig McCorkindale gave an oral update on the Making Justice Work Programme. He advised that the SCS had provided input to the timing of implementation of the Courts Reform (Sc) Act 2014 through the Rules Rewrite Committee; the third stage of the Court Structures project would take place in January; and that the SCS had entered the final stages of procurement for a new case management system and a business case would be considered by the SCS Management Board on 8 December for a fast, reliable and efficient system.

Item 4.3 – Rules Rewrite: update [Oral]

14. Kenny Htet-Khin provided an oral update on the progress of the rules rewrite project. Members were advised that the Costs and Funding Committee would consider an initial policy paper in relation to the privative limit; the Access to Justice Committee would consider a paper on the simple procedure and policy instructions for the new specialist PI court would be considered by the Personal Injury Committee at their December meetings with an update being provided to the SCJC in January 2015. Work is also progressing in relation to judicial review, the Sheriff Appeal Court and Pre-Action Protocols. **Members noted the update and the Chairman thanked the Rules Rewrite Drafting Team for all the work it had done.**

Item 4.4 – Business tracker [Paper 4.4]

15. **Members noted the progress of work as outlined on the Business Tracker at Paper 4.4 and that the tracker will be updated for the next meeting to take account of the range of work being carried out under the Rules Rewrite project.** The Chairman drew attention to a new item of business, following receipt of a paper from Anna Poole QC in relation to carrying out a review of public interest interventions to assess whether they are of benefit and if rules are required. **The Council agreed that the matter should be kept under consideration.**

Item 5: Research and consultations*Item 5.1 – Citizens Advice Scotland Visit [Paper 5.1]*

16. The Chairman thanked Lauren Wood for arranging the SCJC visit to Citizens Advice Scotland. Members indicated that it had been well worth attending the visit to understand how advice is provided in reality. Lauren advised that those involved were pleased to be able to talk about what they deliver, how it is delivered and what they manage to achieve. It was recognised that funding for these services was an issue and Lindsay Montgomery suggested that as large amount of funding was provided through SLAB there may be merit in organising

an event outlining how the grant funding process operates. **Members agreed that there would be value in this and Secretariat will liaise with SLAB to arrange a suitable date.**

Item 5.2 – Stakeholder events [Papers 5.2 and 5.2A]

17. Members considered proposals for the stakeholder events focussing on implementation and evaluation of courts reform (which had been approved in principle at the SCJC 30 June meeting) to be held in the New Year. **Members agreed that the events should be for SCJC engaging and listening to stakeholders; there should be a common core theme running through all the events; and Secretariat should investigate holding additional events to those scheduled and the use of technology to ensure stakeholders unable to attend an event had access to the proceedings.**

Item 5.3 – SLAB ADR research proposal [Papers 5.3 and 5.3A-B]

18. The Council considered the SLAB ADR research proposal and timetable for research into alternative dispute (ADR) resolution in Scotland. **Members agreed that the SCJC should jointly fund this research along with SLAB and the SG.**

Item 6: Secondary Legislation

Item 6.1 – Sheriff Court Adoption Rules [Papers 6.1 and 6.1A-C]

19. The Council was invited to consider and comment on a draft Act of Sederunt [Paper 6.1A] proposing changes to the Sheriff Court Adoption Rules 2009 following issues with reports that are the subject of a non-disclosure determination. The instrument was previously considered by the Family Law Committee who indicated that it was content that the Draft Act of Sederunt be submitted to the SCJC for consideration at its 24 November meeting.

20. **Members considered the draft rules and indicated they are content that they be submitted to the Court of Session with a view to being brought into force on 26 January 2015.**

Item 6.2 – EU Regulation on mutual recognition of protection measures in civil matters [Paper 6.2 and 6.2A]

21. John Thomson spoke to Item 6.2, providing members with an update on developments in relation to implementation of the provisions of EU Regulation 606/2013 on the Mutual Recognition of Protection Measures in Civil Matters. **It was agreed that draft rules be circulated to members for consideration by correspondence, with a view to being submitted to the Court of Session.**

Item 6.3 - EU Regulation on the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast) [Paper 6.3 and 6.3A]

22. Roddy Flinn spoke to Item 6.3 regarding a draft instrument to implement proposals to amend Part V of Chapter 62 of the Rules of Court of Session 1994 to give effect to EU Regulation 1215/2012, which relates to the recognition and enforcement of judgments in civil and commercial matters. **Members agreed that a revised draft instrument be prepared and circulated to members, by correspondence, for consideration within the next two weeks.**

Item 6.4 - Bankruptcy and Debt Advice (Scotland) Act 2014 [Papers 6.4 and 6.4A-B]

23. **Members noted the request from the Accountant in Bankruptcy for court rules as a consequence of the Bankruptcy and Debt Advice (Scotland) Act 2014 and agreed that detailed advice and a draft Act of Sederunt be prepared for consideration at the next meeting.**

Item 6.5 – Marine (Scotland) Act 2010 [Papers 6.5 and 6.5A-B]

24. **The Council noted the request from the Scottish Government for court rules as a result of the commencement of provisions of the Regulatory Reform (Scotland) Act 2014 and agreed that further advice and a draft instrument be prepared for consideration at the SCJC meeting in January.**

Item 7: A.O.C.B.

25. Andrew Stewart QC updated the Council on the progress of arrangements for a visit to the Faculty of Advocates. He confirmed that the visit would take place on Monday 15 December at 10.00am and would include the independent referral Bar; Pro Bono work, training and an open session. Lunch followed by a tour of the library would also be available. A programme for the event would be circulated to those attending.

Item 8: Date of next meeting

26. **Members noted meeting dates for 2015 as provided on the agenda and that the next meeting would take place at 10.00am, Monday 26 January 2015.**

27. **SLAB was invited to deliver a presentation on Making Justice Work Stream 3 at the 26 January 2015 meeting.**

Scottish Civil Justice Council Secretariat

November 2014