

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 29 MAY 2017 AT 10 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Lord President (Chairman)
Eric McQueen (Chief Executive, SCTS)
Colin Lancaster (Chief Executive, SLAB)
Lord Tyre
Lord Boyd
Sheriff Principal Abercrombie QC
Sheriff Murphy QC
Lynda Brabender (Advocate)
Paul Reid (Solicitor)
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Jane Williams (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Brandon Malone (LP member)

In attendance: Yvonne Anderson (Acting Deputy Principal Clerk of Session, 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)
Norman Munro (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
David Ross (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Menzies
Sheriff Hughes
Jan Marshall (Scottish Ministers' representative)
Kenneth Campbell QC (Advocate)

Ian Maxwell (Consumer representative)
Jane MacDonald (SCTS Legislation Implementation Team)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Lord Menzies, Sheriff Hughes, Jan Marshall, Kenneth Campbell QC, Ian Maxwell, Jane MacDonald and Craig McCorkindale.
2. **Following on from discussions at the last meeting, members agreed to consider the publication of papers at the end of meeting.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. It was noted that the Secretariat had received correspondence from Kenneth Campbell QC and Lord Tyre suggesting amendments to the minutes. The suggested changes were incorporated into **Paper 2.1** at “Members Present” and at Item 6.1.
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. FAI Consultation Report

- **Paper 2017/04** was issued to members on 21 March 2017, inviting the Council to consider and approve the draft Report on the Consultation of the draft Fatal Accident Inquiry Rules (**Paper 2017/04A**) for publication on the Council’s website.

- **Responses had been invited by close of business on Tuesday 28 March 2017. A nil response was to be treated as consent. Four responses had been received, all approving the Report for publication.**

B. Rules Rewrite Project: The New Civil Procedure Rules

- **Paper 2017/08** was issued to members on 27 April 2017, inviting the Council to:
 - consider and approve the draft report, *The New Civil Procedure Rules* “the Report”) (**Paper 2017/08A**) and agree its publication;
 - approve the issue of a news release to the Law Society Journal and the Scottish Legal News;
 - approve a summer tour to publicise the report; and
 - approve the establishment of cross-Council working groups to take forward the procedural narrative under Phase 2 of the Rules Rewrite Project Plan.
- **Responses had been invited by noon on Wednesday 3 May 2017. A nil response was to be treated as consent. Five responses had been received approving the report, with one response seeking minor amendment. The Report was updated in light of the amendment and published on the Council’s website on Monday 08 May 2017.**

C. Rules Proposals for the Amendment of the Simple Procedure Rules, Fatal Accident Inquiry Rules and Fees of Sheriff Officers

- **Paper 2017/09** was issued to members on 28 April 2017, inviting the Council to consider and approve draft instruments amending the following Rules:
 - the Act of Sederunt (Simple Procedure) 2016 (contained in **Paper 2017/09A**);
 - the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (contained in **Paper 2017/09A**); and
 - the Act of Sederunt (Fees of Sheriff Officers) (No 2) 2002 (contained in **Paper 2017/09B**).
- **Responses had been invited by close of business on Monday 8 May 2017. A nil response was to be treated as consent. Three responses had been received, all approving the rules. Both instruments were made on 12 May 2017 and will come into force on 15 June 2017.**

7. Members discussed how best to respond to items raised by correspondence and agreed that they would only respond if they had comments to make.

Item 3: Proceedings

Item 3.1 – Committee Membership (Paper 3.1)

8. Members were advised that, following concerns raised at the Council's strategy meeting about the gender balance on the ICT Committee along with a perceived lack of representation from consumers/lay representatives, Lord Tyre, Chair of the ICT Committee, had recently reviewed the membership of the Committee and sought to nominate two new members, namely Claire Taylor, Director of IT for SCTS, and Lauren Bruce, as a consumer representative.

9. Members were invited to approve changes to the nominations for SCTS observer members of the Council and its committees. The changes proposed that the named alternate SCTS member should be replaced by any representative from the relevant branch. This would allow the most appropriate person to attend the meeting, depending on the subject matter. Additional changes to SCTS members were proposed due to foreseen staffing changes.

10. Members approved the appointment of Claire Taylor, Director of IT for SCTS, and Lauren Bruce, as a consumer representative, to the Information and Communications Technology Committee for a period of three years.

11. Members approved, and where appropriate, confirmed, the appointments contained in the table of SCTS observers, reproduced at Annex A.

Item 4: Work Programme

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

12. Due to the meeting taking place on a local public holiday, no Scottish Government representative was in attendance. It was agreed that any written update would be circulated to members following the meeting.

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

13. Eric McQueen updated the Council on the Making Justice Work ("MJW") programme. He advised that the programme was nearing completion, with the transfer of the administrative support function for the Scottish Land Court to the SCTS on 1 April 2017 being the final structural element. The remaining areas

included the implementation of the Simple Procedure (Special Claims) Rules, the development of the online portal of the SCTS's Integrated Case Management System ("ICMS") and programme evaluation. He advised that, in conjunction with the rules re-write team, an operational assessment of the impact of the Simple Procedure Rules will be undertaken. It would involve sheriffs and operational staff, with the outcome reported back to the Council.

Item 4.3 – Business Tracker (Paper 4.3)

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

Item 4.4 – Annual Report 2016/17 and Annual Programme 2017/18 (Papers 4.4 and 4.4A)

15. Members considered the draft Annual Report 2016/17 and Annual Programme 2017/18 at **Paper 4.4A**.

16. **Members approved the Council's Annual Report for 2016/17 and Annual Programme for 2017/18, subject to minor amendment, and to any further minor typographical or stylistic amendment.**

Item 5: Justice system reform: Rules rewrite

Item 5.1 – Rules Rewrite update (Paper 5.1)

17. Kenny Htet-Khin provided an update on the work of the Rules Rewrite Drafting Team. *The New Civil Procedure Rules – First Report* had been published. It sets out next steps for the Rules Rewrite Project. Six work-streams have been identified, but the focus will initially be on four: (i) Commencement and Initial Case Management; (ii) Applications and Motions; (iii) Decrees, Extracts and Enforcement; and (iv) Evidence, Proof and Hearings. It is hoped to have working groups set up over the summer, which may draw on Council members. The Secretariat is liaising with the Sheriffs Principal to organise dates for a summer tour to publicise the *First Report*. Members may be invited to lead in some discussions.

18. Kenny advised that the drafting team is assisting Sheriff Principal Abercrombie in the Sheriff Appeal Court ("SAC") review. It is hoped that an initial paper will be issued to the Sheriffs Principal for consideration at the beginning of June. The paper will look at whether the SAC rules can be streamlined and whether improvements might be made to the allocation of work. The drafting team is working closely with the ICMS team and SCTS regarding the Simple Procedure (Special Claims) Rules and any operational issues regarding the core Simple Procedure Rules.

Item 5.2 – Simple Procedure (Special Claims) Rules (Papers 5.2 and 5.2A)

19. **Paper 5.2** invited the Council to consider and approve a revised draft of the Simple Procedure (Special Claims) Rules (“the special claims rules”) developed by the Access to Justice Committee in conjunction with the Personal Injury Committee. The Chairman advised that since the Access to Justice Committee had approved the draft rules, an amendment had been made to the Eviction Notice of Claim following representations from the SCTS’s Legislation Implementation Team. This was to allow respondents to submit an Eviction Response Form, if they so wish.

20. **Members considered, and approved in principle, the revised draft rules at Paper 5.2A, subject to a further amendment to make it clear that a respondent does not have to complete an Eviction Response Form.**

21. Members noted that the previous planning assumption had been that the special claims rules would come into force in September 2017. However, given the planned commencement of Section 16 of the Housing (Scotland) Act 2014, which transfers the functions and jurisdiction of the sheriff, in relation to certain private rented housing actions, to the First-tier Tribunal, is anticipated towards the end of the year, the Making Justice Work (MJW) Programme Board considered that an implementation date of mid-April 2018 would be more appropriate as it would be preferable for the ICMS Portal to be available for at least three months prior to that date. This would allow for discussions on the draft rules with specific interest groups, over the summer. **The Council noted this update and agreed that a mid-April commencement for the special claims rules would be prudent.**

Item 5.3 – Review of Judicial Review Rules (Papers 5.3 and 5.3A)

22. **Paper 5.3** invited the Council to consider and approve a draft instrument developed by the Rules Rewrite Committee containing amendments to Chapter 30 (‘Withdrawal of Agents’) and Chapter 58 (‘Judicial Review’) of the Rules of the Court of Session. Members discussed the draft instrument, and in particular the proposed changes to Chapter 30. Members agreed that it would be useful to monitor the practical effect of the proposed changes to rules 30.1 (‘Intimation of withdrawal of agent’) and 30.2 (‘Intimation to party whose agent has withdrawn’). It was noted that it may be beneficial to apply the provisions of the proposed rule 30.1 to the sheriff court.

23. **Members considered and approved the draft instrument at Paper 5.3A and agreed that it be submitted to the Court of Session for consideration and approval, subject to any typographical or stylistic amendment.**

Item 6: Justice system reform: General

Item 6.1 – Review of Fees in the Scottish Civil Courts: Consultation Proposals (Papers 6.1 and 6.1A-B)

24. **Paper 6.1** invited the Council to consider and approve certain documents in relation to the Council's function to review fees in the civil courts.

25. **Members considered and approved the following documents in relation to the methodology to be adopted by the Costs and Funding Committee for reviewing fees in the civil courts:**

- **Draft review programme (Paper 6.1A); and**
- **General draft consultation proposal (Paper 6.1B); in particular the scope and extent of the consultation.**

Item 7: Funding, research and consultations

Item 7.1 – Hearing the Voice of the Child: form redesign proposals (Papers 7.1 and 7.1A-B)

26. **Paper 7.1** sought the Council's approval of a funding request from the Family Law Committee to commission a graphic designer to redesign the forms for hearing the voice of the child in family actions. It was noted that the uniform feedback from children and young people, who were consulted about the draft forms, was that they should be more colourful and visually appealing. Members discussed the implications of the redesign and how the forms might be intimidated.

27. **Members considered Papers 7.1 and 7.1A-B and:**

- **Approved the Committee's funding request;**
- **Authorised LPPO and the Secretariat to make enquiries and instruct a suitable graphic designer.**

Item 8: Proposals for rules: policy development

Item 8.1 – Case management hearings in Court of Session family actions (Papers 8.1 and 8.1A)

28. **Paper 8.1** invited the Council to consider and approve draft rules amending Chapter 49 of the Rules of the Court of Session by making provision for case management hearings and pre-proof hearings in family actions. This endorsed the practice that currently operates under a voluntary protocol.

29. **Members considered and approved the draft instrument at Paper 8.1A and agreed that it be submitted to the Court of Session for consideration and approval, subject to any typographical or stylistic amendment.**

Item 8.2 – Lay representation (Papers 8.2 and 8.2A)

30. **Paper 8.2** invited the Council to consider and approve a draft instrument which implements policy proposals developed by the Access to Justice Committee in relation to lay representation.

31. **Members considered and approved the draft instrument at Paper 8.2A and agreed that it be submitted to the Court of Session for consideration and approval, subject to any typographical or stylistic amendment.**

32. Members discussed the wider review of lay representation being undertaken by the Access to Justice Committee and agreed for the Council to provide input when requested in relation to the scope of the review.

Item 9: Proposals for rules: implementation of legislation

Item 9.1 – EU Small Claims Procedure (Papers 9.1 and 9.1A)

33. **Paper 9.1** invited the Council to consider and approve draft rules as a consequence of a new EU Regulation (Regulation (EU) 2015/2421) ('the 2015 Regulation'), which amends the European Small Claims Procedure and European Order for Payment procedure.

34. **Members considered and approved the draft instrument at Paper 9.1A and agreed that it be submitted to the Court of Session for consideration and approval, subject to any typographical or stylistic amendment.**

Item 10: A.O.C.B.

35. No other business was raised.

Agreement of private papers

36. At the conclusion of the meeting, members considered the publication of papers. Roddy Flinn advised that the Secretariat considered it appropriate to publish policy papers in relation to those agenda items approved by the Council.

37. The Council agreed not to publish the following papers: **2.2; 2.3; 3.1; 4.3; 4.4; 4.4A; 5.1; 5.2; 5.2A-B; 5.3A; 6.1; 6.1A-B; 7.1A-B; 8.1A; 8.2A; and 9.1A.**

38. The Council agreed to publish the following papers: **5.3; 7.1; 8.1; 8.2; and 9.1.**

Item 11: Dates of future meetings

39. Members noted the dates of future meetings:

- Monday 10 July 2017 at 10 am
- Monday 2 October 2017 at 10 am
- Monday 20 November 2017 at 10 am

Scottish Civil Justice Council Secretariat

May 2017

TABLE OF SCTS OBSERVER APPOINTMENTS

Scottish Civil Justice Council		
	Observer:	Alternative:
Offices of the Court of Session	Deputy Principal Clerk of Session	N/A
Legislation and Implementation Team	Jane MacDonald, Head of Legislation and Implementation Team	A representative from the Legislation and Implementation Team
Access to Justice Committee		
	Observer:	Alternative:
Offices of the Court of Session	Yvonne Anderson, Depute in charge of the Offices of Court	A representative from the Offices of the Court of Session
Legislation and Implementation Team	Senga Gracie up to 11 September 2017 Mark Kubeczka from 11 September 2017	A representative from the Legislation and Implementation Team
Costs and Funding Committee		
	Observer:	Alternative:
Offices of the Court of Session	Chris Fyffe, Clerking Services Manager	A representative from the Offices of the Court of Session
Legislation and Implementation Team	Jane MacDonald	A representative from the Legislation and Implementation Team
Family Law Committee		
	Observer:	Alternative:
Offices of the Court of Session	Yvonne Anderson, Depute in charge of the	A representative from the Offices of the Court

	Offices of Court	of Session
Legislation and Implementation Team	Nicola Anderson up to 5 June 2017 David Smith from 5 June 2017	A representative from the Legislation and Implementation Team
ICT Committee		
	Observer:	Alternative:
Offices of the Court of Session	Yvonne Anderson, Depute in charge of the Offices of Court	A representative from the Offices of the Court of Session
Legislation and Implementation Team	Nicola Anderson up to 5 June 2017 Jane MacDonald from 5 June 2017	A representative from the Legislation and Implementation Team
Personal Injury Committee		
	Observer:	Alternative:
Offices of the Court of Session	Chris Fyffe, Clerking Services Manager	A representative from the Offices of the Court of Session
Legislation and Implementation Team	Nicola Anderson up to 5 June 2017 Mark Kubeczka from 5 June 2017	A representative from the Legislation and Implementation Team
Rules Rewrite Committee		
	Observer:	Alternative:
Offices of the Court of Session	Chris Fyffe, Clerking Services Manager	A representative from the Offices of the Court of Session
Legislation and Implementation Team	Jane MacDonald	A representative from the Legislation and Implementation Team