

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 29 SEPTEMBER 2014

Members present: Lord President (Chairman)
Lord Menzies
Lord Tyre
Sheriff Principal Stephen
Sheriff Abercrombie QC
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)
Jan Marshall (Scottish Ministers' representative)
Andrew Stewart QC (Advocate)
Kenneth Forrest (Advocate)
Eric Baijal (Solicitor)
Duncan Murray (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, Policy and Legislation Branch, SCS

Secretariat: Roddy Flinn, Secretary to the Scottish Civil Justice Council
Kenny Htet-Khin, Head of Drafting Team
John Thomson, Deputy Legal Secretary
Ondine Tennant, Deputy Secretary
Carmen Murray, Policy Officer

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present, introducing John Thomson, Deputy Legal Secretary, who had recently joined LPPO, and noted that there were no apologies.

2. Members agreed not to publish the following papers: 2.2, 2.3, 4.4, 5.1, 5.3A, 5.4A, 5.4B, 5.5A, 6.1, 6.1A, 6.2.

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. The availability of Committee papers to SCJC members and the possibility of creating a private area for members within the SCJC website was discussed. It was noted that the Secretariat was exploring what resources might be required to support such a forum as part of the development of a business case in this regard. **It was agreed that the Secretariat would revert to the Council on this matter at the next meeting.**

Item 2.3 – Items considered 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. **The SCJC chose not to respond to the IPO Consultation on Secondary Legislation to implement the UPC Agreement and EU Unitary Patent.**
 - B. **The SCJC responded to the SG’s Consultation on Proposals to Reform Fatal Accident Inquiries Legislation on 9 September 2014.**
 - C. **A draft instrument making minor technical changes to the rules as a consequence of the Victims and Witnesses (Scotland) Act 2014 had been approved for submission to the Court of Session when the commencement dates of the relevant Act provisions are known.**

- D. **Draft rules amending Chapter 47 (Commercial Actions) Rules of the Court of Session enabling cases to be removed from the commercial roll for settlement had been approved for submission to the Court of Session. There had been a suggestion that there might be merit in similarly amending the Sheriff Court Rules and it was noted that further advice would be circulated by correspondence in due course.**

Item 3: Proceedings

Item 3.1 – Membership

7. Members congratulated Sheriff Abercrombie QC on his appointment as Sheriff Principal of South Strathclyde, Dumfries and Galloway, and Duncan Murray on his appointment as Sheriff Principal of North Strathclyde.
8. The Chairman informed members that the solicitor member recruitment exercise to fill the vacancy arising from Mr Murray's appointment was almost complete and that an announcement would be made once statutory consultation of the Law Society of Scotland concludes.
9. **Members noted that various committee vacancies would arise as a result of the changes in Council membership and that the Secretariat intended to revert to the SCJC on this matter in early course. The Chairman advised that a gap in the membership of the Costs and Funding Committee had been identified and that he intended to recommend a personal injury practitioner to represent the pursuers' perspective as part of the wider exercise.**

Item 4: Work programme

Item 4.1 – Update from the Scottish Government on legislative developments

10. Jan Marshall provided members with an update on progress in relation to the Courts Reform (Sc) Bill, the Legal Writings (Counterparts and Delivery) (Sc) Bill, development of a Fatal Accident Inquiries Bill and implementation of the Tribunals (Sc) Act 2014 and the Marriage and Civil Partnership (Sc) Act 2014.

11. Ms Marshall explained in particular that the Legal Writings (Counterparts and Delivery)(Sc) Bill, was the first Bill to proceed under the accelerated procedures for Scottish Law Commission drafted Bills before the Delegated Powers and Law Reform Committee.

Item 4.2 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland’s Courts

12. Eric McQueen gave an oral update covering plans for the third stage of the Court Structures project, which would take place in January, and advised that the SCS was about to begin a one year project to develop ICT capabilities in terms of video conferencing, wireless access in all courts and that a tendering process had begun for a contractor to develop a new case management system. It was explained that it was the intention to agree the timescales for implementation of the different stages of the wider courts reform programme towards the end of the year.

Item 4.3 – Rules Rewrite: update

13. Kenny Htet-Khin provided an oral update on the progress of the rules rewrite project advising that three solicitors had been recruited to the drafting team and that the drafters were in the process of scoping the work involved in drafting the rules identified as priority areas by the SCJC. Members were advised that work was already underway on many of the priority areas including the new specialist PI court, the simple procedure and judicial review and would soon begin on the Sheriff Appeal Court and Pre-Action Protocols.

14. **Members noted that a final report on the Rules Rewrite Project would be circulated for consideration after the passage of the Courts Reform (Sc) Bill.**

Item 4.4 – Business tracker [Paper 4.4]

15. **Members noted the progress of work as outlined on the Business Tracker at Paper 4.6, noting in particular a new item of business, following receipt of a paper from Anna Poole QC in relation to Protective Expenses Orders and the operation of Chapter 58A of the Rules of the Court of Session. It was agreed that the Secretariat should write to Ms Poole to inform her that the matter was**

under consideration and that advice should be prepared for consideration at the next meeting.

Item 5: Research and consultations

Item 5.1 – Operation of Chapter 33AA of the Sheriff Court Rules [Paper 5.1]

16. Jane MacDonald provided a report to the Council with reference to **Paper 5.1** on sheriff clerks' views on the operation of Chapter 33AA OCR in relation to case management in family actions. The report suggested that although many courts had not had cases proceed far enough to trigger the new rules, Chapter 33AA did appear to be underutilised, with difficulties in engaging agents and Child Welfare Hearings being used for case management.
17. The Chairman highlighted to members the SCJC's function to keep the civil justice system under review and that this particular matter was a good example of this.
18. Members discussed whether further qualitative and quantitative research on case management in family actions would be helpful in reviewing the operation of Chapter 33AA OCR.
19. **It was agreed that further evidence of the lack of consistency was needed and that the matter should be remitted to the Family Law Committee for consideration, including as to what research or further inquiry might be required, as an urgent priority.**

Item 5.2 – SCJC research priorities

20. Ondine Tennant provided an update on discussions to date with Scottish Government Justice Analytical Services and SCS on possible research topics and the appropriate model or models for carrying out such research. In addition to case management in family actions, it was suggested that further information on party litigants in Scotland would be useful. **It was also noted that SLAB intended to commission, on a joint funded basis, a research project into ADR which would be of interest to the Council. Members agreed to forward any further suggestions for potential research areas to the Secretariat and agreed**

that proposals should be developed for consideration at the next meeting in November.

Item 5.3 – Consultation on Extension of Simplified Divorce [Papers 5.3 and 5.3A]

21. Members considered **Paper 5.3A**, a consultation paper on draft rules for the Extension of Simplified Divorce/Dissolution of a Partnership. **It was noted that the draft rules, a previous version of which had been circulated to the SCJC in June, would be circulated to members following the meeting. Paper 5.3A was approved for publication.**

Item 5.4 – Access to Justice Committee Literature Reviews [Papers 5.4 and 5.4A-B]

22. **Papers 5.4A, a literature review on Party Litigants and the support available to them, and Paper 5.4B on Alternative Dispute Resolution in Scotland and other jurisdictions, were approved for publication subject to any minor drafting amendments required.**

Item 5.5 – Analysis of Information Gathering Exercise on Pre-Action protocols [Papers 5.5 and 5.5A]

23. Members considered **Paper 5.5A**, a Report of the responses to the Personal Injury Committee's Information Gathering Exercise on Pre-Action Protocols and noted that the majority view seemed to be that changes were required to the current voluntary pre-action protocols in order to implement the recommendations of the Scottish Civil Courts Review. The Chairman highlighted that the introduction of pre-action protocols would be likely to have significant implications in the Court of Session and the new specialist personal injury court.

24. **Paper 5.5A was approved for publication subject to any minor drafting amendments required.**

Item 6: Secondary Legislation

Item 6.1 – Marriage and Civil Partnership (Sc) Act 2014 [Papers 6.1 and 6.1A]

25. John Thomson spoke to **Paper 6.1** which invited the Council to submit to the Court of Session draft rules to make amendments to the rules and forms in consequence of the proposed bringing into force of the Marriage and Civil Partnership (Sc) Act 2014 on 18 December 2014. An issue had been identified in the rules and forms relating to actions of divorce based on section 1(1)(b) of the Divorce (Sc) Act 1979, which as a result may require further amendments to be made to take account of the fact that there would be circumstances in which the issuing of an interim gender recognition certificate would no longer be a ground for divorce.

26. Members considered and approved the draft Act of Sederunt and agreed to the revisals as outlined in Paper 6.4 in relation to actions of divorce based on section 1(1)(b) of the Divorce (Sc) Act 1976.

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

27. John Thomson spoke to Item 6.2, informing members that the SG had made a request for rules of court to be prepared to implement the provisions of EU Regulation 606/2013 on the Mutual Recognition of Protection Measures in Civil Matters. There was some discussion of the question as to whether the Regulation could be implemented by court rules alone, in particular in relation to the requirement at Article 4(1) of the Regulation to ensure that protection measures ordered in a Member State are rendered ‘enforceable’ in Scotland. **It was agreed that the SCJC should invite the SG to consider this particular matter. It was also agreed that consideration should be given as to whether such matters might also be dealt with in the sheriff court.**

Item 7: A.O.C.B.

28. Andrew Stewart QC thanked the Secretariat for promoting the work of the SCJC by participating in the annual Doors Open Day at Parliament House on 27 September.

29. Mr Stewart QC also updated the Council on the progress of arrangements for a visit to the Faculty of Advocates. Two possible dates had been identified: 10 November or 15 December. **Members wishing to attend the Faculty visit were asked to contact the Secretariat to confirm which date would be most suitable and to make any suggestions as to the programme of events.**
30. The Chairman advised members that Ondine Tennant, Deputy Secretary to the SCJC, would soon to take up post as Secretary to the Scottish Sentencing Council and as such would not attend any further meetings of the Council. The Chairman wished to note his appreciation of Miss Tennant's work in establishing the SCJC and assisting with the significant progress which had been achieved to date.
31. Duncan Murray wished to record that he had very much enjoyed his experience on the Council over the last 18 months, the progress made by the SCJC, its approach to engagement and noted his thanks to his colleagues on the Council and to the Secretariat and LPPO in helping to achieve that.

Item 8: Date of next meeting

32. **Members noted meeting dates for the remainder of 2014 and for 2015 as provided on the agenda and that the next meeting would take place at 10.00am, Monday 24 November 2014.**

Scottish Civil Justice Council Secretariat

October 2014