

# SCOTTISH CIVIL JUSTICE COUNCIL

## MINUTES

PARLIAMENT HOUSE, MONDAY 30 JUNE 2014

**Members present:** Lord President (Chairman)  
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)  
Duncan Murray (Solicitor)  
Ian Maxwell (Consumer representative)  
Lauren Wood (Consumer representative)  
Employment Judge Joseph d'Inverno (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  
Chris Nicholson, Deputy Legal Secretary  
Graham Crombie, Deputy Legal Secretary  
Ondine Tennant, Deputy Secretary  
Neil Robertson, Policy Officer

**Apologies:** Lord Menzies  
Eric Baijal (Solicitor)  
Prof. Frances Wasoff (LP member)

## **Item 1: Introduction, welcome and apologies**

1. The Chairman welcomed those present and noted apologies.
2. Members agreed not to publish the following papers: 2.2, 3.2, 4.2, 4.4A, 4.4B, 4.4C, 4.6, 5.1, 5.1A, 5.1C, 5.2, 5.3, 5.3A, 5.3B, 5.3C, 5.4A, 5.4B, 5.4C, 6.1, 6.2.
3. The Chairman noted that Neil Robertson and Chris Nicholson were leaving the Scottish Court Service to take up new roles with the Scottish Government. The Chairman thanked them for their work with the Council over the last year.

## **Item 2: Previous Meeting**

### *Item 2.1 - Minutes of previous meeting [Paper 2.1]*

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

### *Item 2.2 - Progress of actions from previous meeting [Paper 2.2]*

5. **Members noted the progress that had been made on actions since the last meeting.**
6. Members discussed the seminar on drafting and the legislative process that had been held on Monday 16 June and noted that it been well received. **The Secretariat was asked to take forward arrangements for further similar events including a visit to a CAB office and the Faculty of Advocates, liaising with Lauren Wood, Andrew Stewart QC and Kenneth Forrest as appropriate.**
7. Following discussion at the last meeting as to which committee was best placed to consider the possible gap between expenses incurred and those recovered, it was agreed that the matter would fall to the Costs and Funding Committee as part of its remit to consider the Taylor Report. However, it was thought that given the access to justice issues arising the Access to Justice Committee's input should be sought at an appropriate stage.

### **Item 3: Proceedings**

#### *Item 3.1 – Standing Orders [Papers 3.1 and 3.1A]*

8. Members considered **Paper 3.1** which sought approval of revised Standing Orders (**Paper 3.1A**) for the Council. **It was agreed to adopt the Standing Orders as amended and the intention to review the standing orders in spring 2015 was noted.**

#### *Item 3.2 - Rules Rewrite Committee: remit and membership [Papers 3.2 and 3.2A]*

9. Ondine Tennant spoke to **Paper 3.2**, which, in light of discussions at the last Rules Rewrite Working Group meeting, sought members' approval of a slightly revised remit for the Rules Rewrite Committee and asked the Council to clarify whether the Committee's remit to prepare 'miscellaneous' rules would extend to rules prepared outwith the Rules Rewrite Project. Approval of changes to the membership to reflect the revised remit was also sought.
10. **Members approved the revised remit, confirmed that it includes preparation of rules falling outwith the scope of the Rules Rewrite Project and agreed to the proposals for extending the membership.** It was considered that the Access to Justice Committee's input would be helpful in preparing the rules to introduce summary sheriffs.

### **Item 4: Work programme**

#### *Item 4.1 – Update from the Scottish Government on legislative developments*

11. Jan Marshall provided members with an update on progress in relation to the Courts Reform (Sc) Bill (following the conclusion of Stage 2 proceedings on 17 June), advised that the Scottish Government had published its response to Sheriff Principal Taylor's Report on 3 July and informed the Council that the Bar Reporters Working Group was due to meet on 2 July to discuss proposals for amendments to court rules.
12. Miss Marshall also noted that the Legal Writings (Counterparts and Delivery) (Scotland) Bill had been introduced on 14 May 2014. **Members wished to record**

**their view that the terms of the Bill generally would be of great value in commercial transactions and marked a positive step in the development of the law of Scotland.**

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

13. Eric McQueen gave an oral update, with reference to business level data as requested at the last SCJC meeting (**Paper 4.2**). Members discussed the data, how the reforms might be evaluated and what role the Council would have in that work. There were some questions about the extent to which national data reflected local experience, for example in relation to the changes brought about by the new Chapter 33AA of the Ordinary Cause Rules. **SCS undertook to ascertain clerks’ views on these matters.** There was some discussion about the data that might usefully be measured and Mr McQueen noted that there was work underway in this regard, as part of wider work to benchmark data for forward evaluation.

*Item 4.3 – Courts Reform (Sc) Bill [Oral, with reference to Paper 4.3]*

14. Roddy Flinn gave an oral update on the Courts Reform (Sc) Bill with reference to **Paper 4.3** which summarised events at Stage 2 proceedings. In particular, Mr Flinn advised that the proposed new privative limit had been set at £100,000 and that the question over the Council’s power to prepare fees instruments had been resolved.

*Item 4.4 - Style Guide and instructing process for rules [Papers 4.4 and 4.4A-C]*

15. Kenny Htet-Khin spoke to the following documents tabled for consideration under item 4.4: a draft style guide for rules prepared under the Rules Rewrite Project, an outline process for instructing rules and a template for covering papers to accompany proposals for rules.
16. **Members approved the documents, subject to some minor amendments to be made to the style guide in light of the provisions of the Courts Reform (Sc)**

**Bill. It was agreed that a final report on the Rules Rewrite Project should be prepared following the parliamentary passage of the Courts Reform (Sc) Bill.**

*Item 4.5 - Stakeholder events [Paper 4.5]*

17. **Paper 4.5** asked the Council to approve in principle arrangements for a series of stakeholder events on courts reform, focussing on implementation and evaluation, towards the end of the year. It was suggested that these events should be held after Stage 3 of the Courts Reform (Sc) Bill was completed and that focus should be given to directed discussions in order to make best use of the time available. **It was agreed that the Secretariat should develop detailed proposals over the summer.**

*Item 4.6 - Business Tracker [Paper 4.6]*

18. Members noted the progress of work as outlined on the Business Tracker. **In respect of the entry on the Legal Writings (Counterparts and Delivery) (Sc) Bill, it was noted that the subject matter fell largely outwith the Council's remit but that the Council would wish to welcome its provisions in general terms if called to give evidence on the Bill. The Secretariat was asked to respond to any call for evidence to this effect.**

**Item 5: Secondary Legislation**

*Item 5.1 – Reporting Restrictions [Papers 5.1 and 5.1A-C]*

19. Chris Nicholson provided an update on the decision in *A v BBC (Scotland)* [2014] UKSC 25 and revisions which had been made to the draft rules in light of the judgment and the responses to the Council's consultation on the issue. The draft rules previously considered had been amended so as to introduce interim orders, remove non-notification provisions and to allow the court's decision to be appealed. It was noted that draft rules for criminal proceedings would be prepared for the Criminal Court Rules Council's consideration in due course.
20. **The Council instructed that rules be prepared in similar terms for civil proceedings in the sheriff court and submitted thereafter to the Court of**

**Session for approval; and noted the proposed implementation date of autumn 2014.**

*Item 5.2 – Simplified Divorce [Paper 5.2]*

21. Graham Crombie updated the Council on the work being done by the Family Law Committee in connection with a Scottish Government proposal to extend the availability of simplified divorce to cases where there are children under the age of 16 but there is no dispute as to the arrangements for their welfare. Draft rules had been prepared to give effect to this proposal.
  
22. **The Council agreed to carry out a consultation on the draft rules to complement the Scottish Government’s planned consultation on the making of orders under section 8(4) of the Civil Evidence (Scotland) Act 1988. It was agreed that the Secretariat should prepare a draft consultation document, seeking the views of the Family Law Committee, for the Council’s subsequent approval and liaise with the Scottish Government with a view to conducting the two consultations in parallel.**

*Item 5.3 – Hague Convention [Papers 5.3 and 5.3A-C]*

23. Graham Crombie spoke to **Paper 5.3**, which invited the Council to submit to the Court of Session draft rules to amend Chapter 5 of the Child Care and Maintenance Rules in order to give effect to the 2007 Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance. **It was agreed that the draft rules should be submitted to the Court of Session.**

*Item 5.4 - Registers of Scotland Requests for Court Rules [Papers 5.4 and 5.4A-C]*

24. Chris Nicholson informed the Council of three requests for rules from Registers of Scotland, as follows:
  - new rules enabling the civil courts to make an order granting warrant to place a caveat on a title sheet of a plot of land in accordance with section 67 of the Land Registration etc. (Scotland) Act 2012;
  - rules setting out information requiring to be included in decrees of reduction of voidable deeds and orders for rectification of certain

documents, as a result of amendments made to the Conveyancing (Sc) Act 1924 and the Law Reform (Miscellaneous Provisions) (Sc) Act 1985 by the Land Registration etc. (Scotland) Act 2012; and

- an amendment to improve the procedure relating to diligence by inhibition on the dependence of a court action by either providing a prescribed form for an application for a recall, or specifying in the court rules that certain information is required in the application.

**25. Members agreed that draft rules should be prepared for consideration at the Council's next meeting.**

*Item 5.5 – Policy Notes [Papers 5.5 and 5.5A]*

26. Members considered the approach to take on the question of preparing policy notes to accompany court rules when they are laid before Parliament, the matter having been referred to the Criminal Courts Rules Council. The Criminal Court Rules Council had discussed the adoption of policy notes at its 2 June meeting and agreed that they should only be prepared where appropriate.

**27. Members agreed that the Secretariat should provide draft policy notes for the Council's consideration where it is considered appropriate and expedient to do so.**

**Item 6: Consultations**

*Item 6.1 – Legislation for a Unified Patent Court and Unitary Patent [Paper 6.1]*

28. Chris Nicholson advised the Council of the Intellectual Property Office's consultation on subordinate legislation to implement the EU Unitary Patent and Unified Patent Court. **Members agreed that this matter should be put forward for consideration by correspondence during July.**

*Item 6.2 – An Environmental Court or Tribunal for Scotland [Papers 6.2 and 6.2A]*

29. The Chairman advised members that Friends of the Earth Scotland was seeking views from stakeholders, including the Council, on the potential creation of an environmental court for Scotland. While it was felt that the consultation addressed important matters (which would be relevant to consideration of specialisation in due course), **it was agreed that the Council should await the outcome of the Friends of the Earth Scotland exercise and the Scottish Government's forthcoming consultation before considering its position.**

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

30. No other business was raised.

**Item 8: Date of next meeting**

31. **Members noted meeting dates for the remainder of 2014 as provided on the agenda and that the next meeting will take place at 10.00am, 29 September 2014.**

**Scottish Civil Justice Council Secretariat**

**July 2014**