

SCOTTISH CIVIL JUSTICE COUNCIL

APPROVED MINUTES

PARLIAMENT HOUSE, MONDAY 06 JULY 2015

- Members present:** Lord Menzies (Chairman)
Sheriff Principal Abercrombie QC
Sheriff Hughes
Eric McQueen (Chief Executive, SCTS)
Colin Lancaster (Director of Policy and Development, SLAB)
Jan Marshall (Scottish Ministers' representative)
Andrew Stewart QC (Advocate)
Paul Reid (Solicitor)
Prof. Fran Wasoff (LP member)
Lauren Bruce (Consumer representative)
Ian Maxwell (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
- In attendance:** Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (SCTS Policy and Legislation Branch)
- Secretariat:** Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Kenny Htet-Khin (Head of the Rules Rewrite Drafting Team)
Kiera Dargie (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:** The Lord Justice Clerk
Lord Tyre
Kenneth Forrest (Advocate)
Eric Baijal (Solicitor)
Jacqueline Harris (Solicitor)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present and noted apologies from the Lord Justice Clerk, Lord Tyre, Kenneth Forrest, Eric Baijal, Jacqueline Harris and Craig McCorkindale.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.1, 3.1B, 4.3, 5.1, 6.1, 6.1.A-C, 6.2, 6.3, 6.3A, 7.1, 7.1A-C, 7.2, 7.2A, 7.3, 7.3A-B, 7.4, 7.4A-C, 8.1A and 8.1B.

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.**

Item 2.3 – Items considered by correspondence [Paper 2.3]

5. **Members noted Paper 2.3** which provided a summary of the outcome of consideration given to the following matter raised by correspondence since the last meeting:
 - A. Following the 11 May 2015 meeting of the SCJC, the Personal Injury Committee was asked to consider a number of matters raised by the Council in relation to the draft personal injury rules. This related to the use of the term “pre-trial meeting” and also transitional provisions. A revised instrument was circulated by correspondence and approved by the members. The Rules were made on 2 June and laid on 4 June.
 - B. Following approval of five sets of draft rules at the last Council meeting, members agreed to consider arising fee implications by correspondence. A draft fees instrument modifying the Table of Fees for solicitors in the Court of Session and sheriff court was circulated and approved by members. The instrument was made on 2 June and laid on 4 June.

6. **Members also noted** that correspondence has been received from the Law Society in relation to the fees, particularly in relation to personal injury actions. This has been added to the agenda as additional business to be considered by the Costs and Funding Committee at their 6 July meeting.

Item 3: Proceedings

Item 3.1 – Committee Membership [Paper 3.1 and 3.1A-B]

7. Scottish Courts and Tribunals Service (SCTS) members were approved as observers on the Council and its committees in May 2014. It was agreed that the arrangements be reviewed after one year. Members were therefore invited to review the policy of appointing SCTS staff as observers to the Council and its committees. **Members agreed that the practice should continue until such time as the Council decides otherwise.**
8. Members were also invited to approve the appointments of Yvonne MacDermid to the Costs and Funding Committee and Graeme Hill to the Information and Communications Technology Committee. **Members approved these appointments.**
9. Members were asked to consider whether the current process for appointing committee members should be set out on the SCJC website and whether appointments to committee for SLAB, SG and SCTS should mirror the standing appointment arrangements that exist for Council appointments.
10. **Members indicated that they were content with the appointments process and that, in the interests of transparency, details of the process along with an invitation to register to become a committee member should be published on the SCJC website. They also indicated that ‘standing appointment’ arrangements should operate for SLAB, SG and SCTS committee members, with provision for alternative representation.**

Item 4: Work programme

Item 4.1 – Update from the Scottish Government on legislative developments [Oral]

11. Jan Marshall advised members that implementation of the Courts Reform (Scotland) Act 2014 was on track with key provisions coming into force on 22 September 2015; the next tranche was also on track to be put in place at the turn of the year; there was ongoing work in relation to tribunals and a consultation on the Scottish Tax Tribunal Rules would close on 28 July 2015; SG was working closely with Whitehall colleagues in relation to the Smith Commission's recommendations on the reserved Tribunals and that a debate on the Scotland Bill was scheduled in the House of Commons on 6 July 2015.
12. Jan provided members with an update on progress in relation to the Inquiries into Fatal Accidents and Sudden Deaths etc., (Scotland) Bill and Patricia Ferguson's Inquiries into Deaths (Scotland) Bill. The Justice Committee heard evidence in parallel on these Bills and the Stage 1 Report for the SG Bill was published on 1 July 2015. The Stage 1 Report on the Member's Bill was anticipated in September 2015.
13. Jan also advised that, to implement a Scottish Law Commission Report, the Succession (Scotland) Bill which relates to technical aspects of the law of succession had been introduced on 16 June 2015 and that a consultation on proposals for a fundamental reform of the law of succession, to be contained in a second Succession Bill, was published on 26 June 2015; a consultation on removing the three year limitation period for survivors of historic childhood abuse had been published on 25 June 2015; the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 had come into force on 1 July 2015 and had been positively received; and Stage 1 of the Apologies (Scotland) Bill (introduced by Margaret Mitchell, MSP) had concluded before summer recess.

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

14. Eric McQueen gave an oral update on the Making Justice Work Programme. He advised that the April merger of the Scottish Court Service and the Tribunal Service had gone well and that there was a range of work being undertaken towards full implementation, including discussion with the SG on the detail of the Scotland Bill and what it might mean for SCTS. Eric advised that planning for the implementation on 22 September 2015 of provisions in the Courts Reform (Scotland) Act 2014 was in the final stages.
15. In relation to the integrated case management system, Eric indicated that significant progress had been made; Kainos were working on prototypes and that there had been good stakeholder engagement. As part of that, Kainos will be seeking views and feedback from the SCJC and its committees.
16. **Members noted these updates.**

Item 4.3 – Business Tracker [Paper 4.3]

17. **Members noted the progress of work as outlined on the Business Tracker at Paper 4.3.**

Item 4.4 – Stakeholder events [Oral]

18. The Chair advised that the stakeholder event had taken place on 2 July 2015 at 4pm in Parliament House.
19. The Chair also advised that the following Council and Committee members had spoken at the event:
- Kenneth Forrest – Rules Rewrite Committee
 - Judge Joseph d’Inverno – Access to Justice Committee
 - Eric Baijal – Costs and Funding Committee
 - Craig McCorkindale – ICT Committee
 - Maria Maguire QC – Personal Injury Committee
 - Lynda Brabender - Family Law Committee.

20. **Members noted that the stakeholder event had been a great success and recorded their thanks to all Council and Committee members who had spoken at the event and to those who organised it.**

21. **Mandy Williams** provided an update on the winter tour events which would focus on the detail of the new rules under Courts Reform and provide an opportunity for feedback on how the rules are working at this early stage. She advised that progress was being made on the dates with locations identified for each sheriffdom and that venues have now been agreed as follows:

- Dumfries Sheriff Court 12/11/15
- Aberdeen Sheriff Court 18/11/15
- Inverness Sheriff Court 19/11/15
- Glasgow Sheriff Court 26/11/15
- Perth Sheriff Court 3/12/15

22. Mandy also advised that Secretariat was waiting for confirmation in relation to the following suggested dates and venues:

- Kilmarnock Sheriff Court 5/11/15
- Selkirk Sheriff Court 10/12/15.

23. **Members noted the arrangements and were content with the geographical spread of the events.**

Item 5: Rules Rewrite

Item 5.1 - Rules Rewrite: update [Oral and Paper 5.1]

24. **Kenny Htet-Khin** provided an oral update on the progress of the rules rewrite project. He advised that the next steps included developing a Practice Note for the Judicial Review Rules with stakeholder involvement and progressing rules in relation to the Sheriff Appeal Court (civil) and Simple Procedure. The activity tracker [**Paper 5.1**] records the progress of matters being taken forward as part of the Rules Rewrite project.

25. **Members noted the oral update and the progress made as detailed in the activity tracker.**

Item 6: Research and consultations*Item 6.1 – Procedures in the Employment Tribunal [Papers 6.1 and 6.1A-C]*

26. Judge d’Inverno presented three papers which he had prepared in relation to procedures in the Employment Tribunal which may be of interest to the Council in relation to reform of civil procedure and the rules rewrite project in particular. These papers outlined: case management in the Employment Tribunal; judicial mediation in the Employment Tribunal; reconsideration of judgments and decisions in the Employment Tribunal.

27. **Members thanked Judge d’Inverno for submitting the papers to Council and agreed that:**

- **in light of the work of the Family Law Committee, the papers on case management and judicial mediation should be submitted to that Committee; and**
- **while there was merit in exploring reconsideration of judgments further the Rules Rewrite Team would be concentrating over the next year on work to timed deadlines therefore the matter should come back to the Council in 12-18 months for further consideration when other changes had bedded in.**

Item 6.2 – ICTC paper on online dispute resolution for low value claims [Paper 6.2]

28. **Paper 6.2** sought authorisation from the Council to allow the ICT Committee to take forward consideration of online dispute resolution with a view to making recommendations to the Council.

29. It was suggested that this should be considered in light of what is already being taken forward in that area i.e. the Justice Digital Strategy Portal. **Members agreed that a strategy meeting to discuss work priorities would be useful and consideration should be given to arranging this.**

30. **Following discussion, members approved the ICT Committee's proposal to conduct detailed consideration of online dispute resolution with a view to making recommendations to the Council. Members also recommended that the ICT Committee shares its consideration with the Access to Justice Committee as the work develops.**

Item 6.3 – Report on visits undertaken by the ICTC [Papers 6.3 and 6.3A]

31. **Members noted the report of the visits undertaken by the ICT Committee to investigate three IT systems currently in use in the justice sector in the UK. They considered this to be a useful approach and recorded their thanks to the Secretariat for the organisational work.**

Item 7: Secondary Legislation

Item 7.1 – Revenue Scotland and Tax Powers Act 2014 [Papers 7.1 and 7.1A-C]

32. **Kiera Dargie** spoke to this item. She explained that these were straightforward rule changes to mirror the powers which already exist for Officers of HM Revenue and Customs. The rules and form are to be included in a combined miscellaneous instrument.

33. **Members considered the draft rules and prescribed form and indicated that they were content that they be submitted to the Court of Session for consideration, with a view to being brought into force as soon as possible.**

Item 7.2 – Enterprise Act 2002 [Papers 7.2 and 7.2A]

34. **Roddy Flinn** spoke to this item. He explained that this was a policy paper on proposals received from the Department for Business, Innovation and Skills for draft rules in relation to the transfer of cases from the Court of Session and the sheriff court to the Competition Appeal Tribunal and that no rules had been drafted as yet.

35. **Following discussion, members agreed that, in light of the proposed commencement date for regulations, draft rules be circulated by correspondence for approval.**

Item 7.3 – Counter-Terrorism and Security Act 2015 [Papers 7.3 and 7.3A-B]

36. **Kiera Dargie** spoke to this item. She explained that these draft rules are to be incorporated into a miscellaneous instrument. They relate to the implementation of the Counter-Terrorism and Security Act 2015 and insert a new part into Chapter 3 of the Summary Application Rules along with new Forms 69 and 70.
37. Sheriff Principal Abercrombie noted concerns about the provisions in the draft rules in relation to withholding of specified information from the subject of the application and his legal advisors. Other members shared this view but it was noted that the Council would have to accept this as it was provided for in the primary legislation. It was also noted that the provision was limited to applications for extended detention of travel documents. It might well be the case that for more serious sanction provision would require to be made for a 'special adviser' process.
38. **Members indicated that they were content that the draft rules be submitted, with minor amendments to Form 70, to the Court of Session for consideration, with a view to being brought into force in August 2015.**

Item 7.4 – Proceeds of crime and serious crime prevention orders [Papers 7.4 and 7.4A-C]

39. The Council considered three proposals from the Scottish Government for draft rules in relation to aspects of legislation relating to proceeds of crime and serious crime prevention orders. These proposals were for information only at this stage and the Council was advised that they were under consideration by LPPO and that there was a crossover between criminal and civil rules of court.
40. **Members noted the requests and agreed that draft rules should be considered either by correspondence or at the next SCJC meeting.**

Item 8: A.O.C.B.

41. Members were advised that the Civil Justice Statistics in Scotland 2013-14 was to be published by the Scottish Government on 21 July 2015 and that the title had changed slightly from Civil Law Statistics in Scotland. **Members noted this update.**
42. Members were informed that the Academic Director of the Diploma in Professional Legal Practice at Strathclyde University wanted a representative from the Council to speak at a Civil Justice Conference he will be hosting on 24th August 2015. **Members interested in speaking at this event were invited to confirm their interest to the Deputy Secretary of the SCJC by email in the first instance.**
43. Members discussed correspondence between the Dean of the Faculty and the Lord Justice Clerk (in his capacity as the acting Chair of the Council) in relation to SCJC consultation with the Faculty.
44. **Members noted that Faculty of Advocates is a key stakeholder and that Advocate members of the Council had been appointed as individuals rather than as representatives of the Faculty. It was recognised that there may be circumstances in which a member of the Faculty / Law Society might wish to take the views of his parent organisation. If so, there was a potential difficulty in relation to confidentiality and the Standing Orders may need to be reviewed. Members agreed that this issue should be taken forward to the next meeting.**
45. Ian Maxwell suggested that the SCJC consider draft rules which make provision for the appointment of Child Welfare Reporters by correspondence. Ian advised that the rules had already been considered by the Child Welfare Reporters Working Group and by the Family Law Committee and had been subject to extensive negotiation prior to being signed off at the FLC 22 June meeting for submission to the Council. **Members agreed that the rules be considered by correspondence over the summer.**

Item 9: Date of next meetings

46. Members noted the new meeting dates for 2016; the last meeting had been changed to 21 November from 28 November, as 28 November is the St Andrew's Day Public Holiday; and the next meeting would take place at 10.00am, Monday 28 September 2015.

Scottish Civil Justice Council Secretariat

July 2015