

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**  
**MONDAY 3 OCTOBER 2016 AT 10 AM**  
**JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

**MINUTES**

**Members Present:** Lord Menzies (Deputy Chair)

Eric McQueen (Chief Executive, SCTS)

Colin Lancaster (Chief Executive, SLAB)

Jan Marshall (Scottish Ministers' representative)

Lord Tyre (for item 2.2 only)

Sheriff Principal Abercrombie

Lynda Brabender (Advocate)

Kenneth Forrest (Advocate)

Paul Reid (Solicitor)

Jacqueline Harris (Solicitor)

Ian Maxwell (Consumer representative)

Jane Williams (Consumer Representative)

Employment Judge d'Inverno (LP member)

Brandon Malone (LP member)

**In attendance:** Craig McCorkindale (Making Justice Work 1 Programme Manager) – up to item 4.3 only

Jackie Powell (ICMS Product Owner) – up to item 4.3 only

Jane MacDonald (SCTS Legislation and Implementation Team)

Gillian Prentice (Deputy Principal Clerk of Session)

**Support:**

Roddy Flinn (Legal Secretary to the Lord President)

Kenneth Htet-Khin (Head of Rules Rewrite Drafting Team)

Andrew Campbell (Head of Legal Secretariat, Lord President's Private Office)

John Thomson (Deputy Legal Secretary, Lord President's Private Office)

Luke McBratney (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Edward McHugh (Deputy Legal Secretary, Lord Presidents Private Office)

Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)

Lauren Gibb (Policy Officer, Scottish Civil Justice Council)

**Apologies:**

Lord President

Lord Tyre

Lord Boyd

Sheriff Hughes

Sheriff Murphy

Joel Conn

**Item 1: Welcome, apologies and agreement of private papers.**

1. The Chair welcomed those present, in particular, Jane Williams, Brandon Malone and Lynda Brabender, who were attending their first meeting, and noted apologies from the Lord President, Lord Tyre, Lord Boyd, Sheriff Hughes, Sheriff Murphy and Joel Conn.
2. The Council agreed not to publish the following papers: 2.2, 3.1, 4.4, 4.4A, 4.5, 5.1, 5.2, 5.2A-B, 5.3, 5.3A-C, 6.1, 6.1A-B, 6.2, 6.2A-B, 6.3, 6.3A-C, 6.4, 6.4A-E, 6.5, 6.5A-C, 6.6, 6.6A.

## **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 – Activity since last meeting (Paper 2.2)*

- 4. Members noted the progress that had been made on actions since the last meeting**
5. Employment Judge d’Inverno provided an overview of a presentation given to the Access to Justice Committee at their last meeting dated 29 August 2016 by Halle Turner, PhD student at the University of Glasgow on her research into lay representation in the Scottish courts and discussed a number of her research findings. In particular, members discussed the availability of guidance for lay representation, which will be considered further by the Committee. Members also noted the value of in-court advisors but acknowledged the difficulty in assessing their effectiveness. Sheriff Principal Abercrombie advised that he would be happy to provide any statistics held at court level in relation to cases involving in-court advisors.
6. Lord Tyre attended to provide an overview of the ICT Committee’s discussions with Lord Justice Briggs on 13 June 2016 regarding his interim report into the possibility of online courts in England and Wales. Members noted that Lord Justice Briggs puts forward a model of online courts comprising of three tiers; triage, conciliation and adjudication. Members noted that the challenges for such a project are knowledge engineering, i.e. designing a system that contains enough relevant data to produce the correct result, and funding. Members noted that £700 million had been budgeted in England and Wales for the project.

## **Item 3: Proceedings**

### *Item 3.1 – Committee Membership (Paper 3.1)*

- 7. The Council considered Paper 3.1 and approved the following changes in committee membership:**
  - The appointment of Kenneth Campbell QC to the Rules Rewrite Committee**
  - The appointment of Ian Shanks to the Rules Rewrite Committee**

- **The re-appointment of Sheriff C Stoddart to the Costs and Funding Committee for a further three year period from the expiry of his tenure on 18 November 2016**
- **The re-appointment of Alan Rogerson to the Costs and Funding Committee for a further three year period from the expiry of his tenure on 18 December 2016**
- **The appointment of Sheriff Principal Turnbull to replace Sheriff Principal Scott on the Access to Justice and the Rules Rewrite Committees.**

#### **Item 4: Work Programme**

##### *Item 4.1 - Update from the Scottish Government on legislative developments (Oral)*

8. Jan Marshall provided members with an update on legislative developments in the Scottish Government. Jan advised that the Government's Programme for Government for 2016/17 confirmed that in the current Parliamentary year there would be a bill to implement a Scottish Law Commission report on third party rights in contracts, to remove the limitation period for survivors of historical child abuse and to implement Sheriff Principal Taylor's review of costs and funding in civil litigation. On implementation, work is ongoing to implement the remaining provisions of the Courts Reform (Scotland) Act 2014 and to implement the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 which will be coordinated with the Council's work on the necessary court rules. Jan advised that there was nothing to report in relation to closed consultations as responses had yet to be published.

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

9. Craig McCorkindale provided an update on the Making Justice Work programme of reform. Craig informed Members that the focus for the remainder of this year is on the practical implementation of Simple Procedure and final preparations for the launch of the new Integrated Case Management System (ICMS) to internal court staff at the end of October 2016. Craig advised that a second two week round of ICMS Business Practice Testing had just been completed across six sheriff courts, the Sheriff Appeal Court and the Court of Session. The results of that testing are currently being assessed and will inform any last minute changes to the product.
10. Craig advised that SCTS is in the Post Implementation Review phase on the Shaping Scotland's Court Services programme of work. The Evaluation

Report that has recently been issued online is continuing to receive some ongoing media and political interest.

*Item 4.3 - Demonstration of new SCTS Integrated Case Management System (ICMS) (Oral)*

11. Jackie Powell, ICMS Product Owner, provided an overview of the new case management system and advised that the project was now engaging with the Rules Rewrite Drafting Team around the development of editable PDF documents. She advised that the portal is designed to be user-centric and allow users to track their cases electronically.
12. Members were invited to attend demonstrations of the new system at Committee meetings dated 10 and 17 October. **The Secretariat agreed to email members with details of the demonstrations.**

*Item 4.4 – Interim Update on Priorities (Papers 4.4 and 4.4A)*

13. The Council noted papers 4.4 and 4.4A which gave an update of the Council's progress against its priorities for 2016/17.
14. **Members agreed that Paper 4.4A need not be marked as private and agreed it should be published on the Council's website.**

*Item 4.5 – Business Tracker (Paper 4.5)*

15. **The Council noted Paper 4.5 which provided an update of the Council's work.**
16. The Council noted that Doors Open Day, held in Parliament House on Saturday 24 September 2016, was well attended by the public and that the Council Secretariat ran a stall to inform the public about the Council and its work.

**Item 5: Justice system reform: Rules rewrite**

*Item 5.1 - Update from the Rules Rewrite Drafting Team (Paper 5.1)*

17. Kenneth Htet-Khin, Head of Rules Rewrite Drafting Team, provided an update on the work of the Rules Rewrite Drafting Team. He advised that the team is currently working on the Simple Procedure (Special Claims) Rules, which are due to be considered by the Access to Justice and Personal Injury Committees at their meetings dated 17 October 2016 and by Council at the

meeting dated 21 November 2016. He advised that these chapters would be subject to a short, informal consultation with stakeholders and that the final rules were due to be submitted to Council for approval at their meeting in May 2017. He noted that the work of the Fatal Accident Inquiry Working Group was ongoing.

18. Members noted Paper 5.1, which has now been updated to include all matters within the Courts Reform Project that are capable of implementation by rules of court.

*Item 5.2 - Simple Procedure – ancillary rules (Papers 5.2 and 5.2A-B)*

19. The Council considered draft rules at **Papers 5.2 A and B** prepared by the Access to Justice Committee and Costs and Funding Committee. Luke McBratney explained that these instruments are part of a suite of rules required to implement the new simple procedure.
20. The Council noted that the draft instrument at **Paper 5.2A** makes provision for the fees of solicitors in the sheriff court under simple procedure. The instrument provides fees for cases raised under the core Simple Procedure Rules, which are soon to come into force.
21. The Council noted that the draft instrument at **Paper 5.2B** makes consequential amendments to other court rules resulting from the introduction of the simple procedure rules. Luke McBratney explained that whilst the Rules contain a comprehensive code for the processes involved in such cases, this instrument makes the necessary changes to other rules in order to allow simple procedure to operate alongside and with them. The instrument also makes some amendments to the Rules before they come into force. These amendments fix some typographical errors and clarify some aspects of the Rules to ensure they can function as intended.
22. **The Council agreed that the draft instruments at Papers 5.2A and 5.2B be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

*Item 5.3 - Bankruptcy (Scotland) Act 2016 (Papers 5.3 and 5.3A-C)*

23. The Council considered draft rules at **Papers 5.3 A and B**. Members noted that the Bankruptcy (Scotland) Act 2016 re-enacts and consolidates the provisions of the Bankruptcy (Scotland) Act 1985, which has since been heavily amended.

24. Members noted that these rules have been developed by the Rules Rewrite Committee as the result of a policy request from the Scottish Government. This policy request notes that the effect of the 2016 Act is that the legislative references to provisions in the 1985 Act will no longer be applicable for new sequestration petitions and applications once the 2016 Act is in force. As a consequence, new or revised rules are required to update the changes in references to the primary legislation.
25. Members noted that the draft instrument provided at **Paper 5.3A** contains new sheriff court bankruptcy rules which implement the 2016 Act. The draft instrument provided at **Paper 5.3B** amends Chapter 72 of the Rules of the Court of Session 1994 and includes consequential amendments and transitional arrangements required for implementation of the 2016 Act.
26. **The Council considered the draft rules and agreed that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

#### **Item 6: Proposals for Rules**

##### *Item 6.1- Pre-litigation fees (Papers 6.1 and 6.1A-B)*

27. The Council considered Paper 6.1A which set out draft amendments to the tables of fees relating to personal injury actions in the sheriff court.
28. Members noted that on the Council's recommendation, the Court of Session has approved amendments to both the Ordinary Cause Rules and Summary Cause Rules, requiring parties to personal injury claims worth less than £25,000 to comply with a compulsory pre-action protocol. These new rules will come into force on the 28 November 2016 and will apply where the accident or other event giving rise to the claim occurred on or after that date. Members noted that it is intended that the draft amendments to the relevant tables of fees will be submitted to the Court of Session for approval, with a view to being brought into force along with the pre-action protocol on 28 November 2016.
29. **The Council approved the proposed amendments to the table of fees and agreed that the draft instrument be submitted to the Court of Session for consideration and approval, subject to any stylistic or typographical amendment.**

##### *Item 6.2 - Regulation of fees: Shorthand Writers (Papers 6.2 and 6.2A-B)*

30. Members considered Papers 6.2A and 6.2B which provided draft rules to increase the fees payable to shorthand writers in relation to Court of Session and sheriff court proceedings.
31. Members noted that the draft rules propose an increase of 3.5% in the fees payable to shorthand writers in relation to Court of Session and sheriff court proceedings.
32. **The Council approved the draft rules shown at papers 6.2A and 6.2B and agreed that they be submitted to the Court of Session for consideration and approval, subject to any stylistic or typographical amendment.**

*Item 6.3 - Protective Expenses Orders (Papers 6.3 and 6.3A-C)*

33. Members considered Papers 6.3 which provided draft rules to regulate applications for Protective Expenses Orders ('PEOs') in environmental proceedings.
34. Members agreed that there should be a consultation on these draft rules.
35. **The Council agreed that a revised draft of these rules alongside a consultation paper should be submitted for consideration at the next appropriate Council meeting.**

*Item 6.4 - Postal Administration (Scotland) Rules 2016 (Papers 6.4 and 6.4A-E)*

36. Members considered Papers 6.4A which provided draft rules amending Chapter 74 of the Rules of the Court of Session to give effect to provisions contained in the Postal Administration (Scotland) Rules 2016 (S.I. 2016/900) regarding the form of a postal administration in Scotland.
37. Members noted that the new rules of court will apply only to a company offering universal postal services which the courts in Scotland have jurisdiction to wind up.
38. **The Council approved the draft rules shown at Paper 6.4A and agreed that they be submitted to the Court of Session for consideration and approval, subject to any stylistic or typographical amendment.**

*Item 6.5 - Proceeds of Crime and Serious Crime Prevention Orders (Papers 6.5 and 6.5A-C)*

39. Members considered Papers 6.5B which provided draft rules to implement legislation relating to organised crime.

40. Members noted that these draft rules follow policy proposals from the Scottish Government regarding three separate pieces of legislation:
- The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (SI 2014/3141, as amended by SI 2014/3191) (the Regulations) in relation to the mutual recognition of confiscation and freezing orders
  - The Serious Crime Act 2015 and the Policing and Crime Act 2009 in relation to proceeds of crime and
  - The Serious Crime Act 2015 in relation to serious crime prevention orders in Scotland
41. **The Council approved the draft rules shown at Paper 6.4A and agreed that they be submitted to the Court of Session for consideration and approval, subject to any stylistic or typographical amendment.**

*Item 6.6 - Counter Terrorism and Security Act 2015 (Papers 6.6 and 6.6A)*

42. Members considered Paper 6.6A which provided a policy request submitted by the Scottish Government for amendment to the Rules of the Court of Session as a result of the provisions of the Counter-Terrorism and Security Act 2015.
43. Members noted that the 2015 Act provides for the creation of a temporary exclusion order to disrupt the activities of and control the return to the UK of a British citizen reasonably suspected of involvement in terrorist activity abroad. Schedule 2 provides for references to the court where temporary exclusion orders are imposed in cases of urgency and Schedule 3 makes provisions about proceedings relating to temporary exclusion orders. As a result, members noted that existing civil rules will need to be amended and new rules will also be required.
44. **The Council instructed LPPO to prepare draft rules for consideration at the next appropriate Council meeting.**
45. **The Council agreed that these draft rules should provide for special advocates as per paragraph 10 of Schedule 3 of the Act, but should not provide for advisers to the court as per paragraph 8 of Schedule 3.**

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

46. Sheriff Principal Abercrombie proposed that the review of the rules relating to the Sheriff Appeal Court be brought forward from mid-2017 to now to address some issues that had arisen since the Sheriff Appeal Court was established.
47. **Members agreed in principle with the proposal, subject to resource implications, and agreed that Sheriff Principal Abercrombie discuss this matter further with the Secretariat and report back on the agreed timescales at the next meeting.**

#### **Item 8: Dates of future meetings**

48. Members noted the dates of future meetings:
- Monday 21st November 2016 at 10 am
  - Monday 23rd January 2017 at 10am
  - Monday 20th March 2017 at 10am
  - Monday 29th May 2017 at 10am
  - Monday 10th July 2017 at 10am
  - Monday 02nd October 2017 at 10am
  - Monday 20th November 2017 at 10am
49. **Members noted that the Secretariat had identified Monday 23 January 2017 as a possible date for the Council's annual strategy meeting. Members noted that this would be an all-day event and that the Secretariat would confirm the date of the strategy meeting in due course.**

**Scottish Civil Justice Council Secretariat**

**October 2016**