

# SCOTTISH CIVIL JUSTICE COUNCIL

## MINUTES

PARLIAMENT HOUSE, MONDAY 23 SEPTEMBER 2013

**Members present:** Lord President (Gill)  
Lord Menzies  
Lord Tyre  
Sheriff Principal Stephen  
Eric McQueen (Chief Executive, SCS)  
Lindsay Montgomery (Chief Executive, SLAB)  
Jan Marshall (Scottish Ministers' appointee)  
James Wolffe QC (Advocate)  
Sarah Wolffe QC (Advocate)  
Eric Baijal (Solicitor)  
Duncan Murray (Solicitor)  
Ian Maxwell (Consumer representative)  
Lauren Wood (Consumer representative)  
Employment Judge Joseph d'Inverno (LP member)

**In attendance:** Craig McCorkindale, SCS  
Gillian Prentice, Deputy Principal Clerk of Session  
Kay McCorquodale, SG Justice Directorate  
Frances MacPherson, Sheriff Clerk

**Secretariat:** Roddy Flinn, Secretary  
Ondine Tennant, Deputy Secretary  
Lisa Gamble, Policy Officer

**Apologies:** Sheriff Abercrombie QC  
Prof. Frances Wasoff (LP member)

### Item 1: Introduction, welcome and apologies

#### *Apologies*

1. The Lord President welcomed those present and noted apologies.

2. Members agreed not to publish the following papers: 2.2, 4.3 and 4.3 A, 5.2 A, 6.1A, 6.2B, 6.3B, 6.4, 7.2 and 7.2A, 7.3 and 7.3 A-E, 7.4 and 7.4A, 7.5 and 7.5 A-B.

## **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 since the last meeting and that the following matters will be carried forward to future meetings:
  - 2) development of a records management plan;
  - 10) consideration of the judicial rate of interest;
  - 18) update on Consultative Committee on Commercial Actions; and
  - 19) update on Scottish Government Bar Reporters Working Group.

### *Item 2.3 - Update on activity since previous meeting [Papers 2.3, 2.3A and 2.3B]*

5. Members considered papers 2.3, 2.3A and 2.3B, which provided an update on SCJC and related activity which had taken place since the last meeting.
6. Lord Menzies provided an oral update on the Rules Rewrite Working Group's (RRWG) activity. The Group had considered a helpful research paper prepared by Julius Komorowski (Law Clerk to the Lord President) on the approaches adopted by other jurisdictions in respect of similar rules revision projects. The Group's initial focus would be on the question of how extensive the rules rewrite should be and it planned to undertake face-to-face discussions with a view to learning more from the experiences of England and Wales and the Employment Tribunal. **In light of the timescale within which the Group was to report, it was agreed that updates on RRWG activity would continue to be provided on an oral basis.**
7. **Members agreed that an activity update in the form provided should become a standing agenda item, noting, in particular, the committee activity reports. It was agreed a similar update should be provided by email between meetings.**

8. There was discussion about making committee papers available to SCJC members. **It was decided that the Secretariat should make papers available to members on request, while the possibility of creating a private area within the SCJC website for this purpose was explored.**

### **Item 3: Proceedings**

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

9. **Members agreed to adopt the revised standing orders for the Council and noted the intention to review the standing orders in spring 2014.**

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

#### *Item 4.1 - Update from the Scottish Government on legislative developments (Court Reforms (Sc) Bill, Tribunals (Sc) Bill, SP Taylor Review, Criminal Justice (Sc) Bill, Programme for Government)*

10. Jan Marshall gave an update on various legislative developments underway in Scotland. Ms Marshall explained that Scottish Government officials were giving consideration to the Report of Sheriff Principal Taylor's Review, in conjunction with the SCJC Secretariat and others, in order to establish what might be required in terms of legislation in relation to any implementation of its recommendations.

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

11. Craig McCorkindale provided members with an update on the Making Justice Work (MJW) Programme, noting that a Gateway Review of the Programme had recently concluded that progress was being made as expected. In terms of the proposals in respect of the court estate, the first phase of implementation was scheduled to begin on 30 November, the relevant subordinate legislation having been approved by the Justice Committee earlier in the year.

#### *Item 4.3 - Annual Programme [Papers 4.3 and 4.3A]*

12. Members considered a draft Annual Programme for the SCJC for 2013/14. It was considered that the significance of the Housing (Sc) Bill on the work of the SCJC merited specific mention in the business plan and that the corporate activity

section should include consideration of how the SCJC should give regard to its guiding principles.

13. In addition, the following matters, which were to be taken forward by the Secretariat, were noted: further work in relation to the implications of the Scottish Government's 2013/14 legislative programme; a series of court visits by members; arrangements for a joint event involving SCJC and SCS Board members; and a review of the SCJC's operations and structure was to be carried out as part of the preparation for the 2013/14 annual report.
14. The Chairman paid tribute to the work of the Secretariat in producing the Programme. **Subject to some minor amendments, it was agreed that the draft should proceed to publication in late October.**

## **Item 5: Communications and engagement**

### *Item 5.1 – Launch event*

15. Lisa Gamble explained the detail of the arrangements for the SCJC launch event which was to be held that evening.

### *Item 5.2 - Communications Strategy [Papers 5.2 and 5.2A]*

16. Members considered a draft Communications Strategy for the SCJC and discussed whether there were any further opportunities for communications activity. **Members agreed that the Secretariat should provide a core briefing for members who, when attending events, may be positioned to speak about the work of the SCJC. It was agreed that the strategy should include reference to the requirement contained in the standing orders to inform the Secretariat of any planned engagement or communications activity.**
17. Eric Baijal provided an update following his 3 July meeting with the Law Society of Scotland. **It was agreed that Mr Baijal should continue to liaise with the Society in this regard and that engagement with the Faculty of Advocates should be added to the Communications Plan.**
18. There was discussion of engagement with equivalent bodies in the other UK jurisdictions and it was felt that it would be helpful to learn more from the experience of the Civil Justice Council and Civil Procedure Rules Committee in England and Wales in particular. **The Chairman agreed to write to the Chairs of those bodies in this regard.**

19. **Subject to the amendments discussed, members were content to adopt the communications strategy.**

#### **Item 6: Committee structure and associated groups**

##### *Item 6.1 - SCJC committee structure and other working groups [Papers 6.1 and 6.1A]*

20. The Council noted the remit and membership of various working groups and committees, detailed in Papers 6.1 and 6.1A, which from time to time might be giving consideration to matters falling within the remit of the SCJC. **It was agreed that the Secretariat should continue to monitor the work of those groups and provide further information to the Council on these matters in due course or on request.**

##### *Item 6.2 - Access to Justice Committee [Papers 6.2, 6.2A and 6.2B]*

21. Members considered the proposed remit and membership of the Access to Justice Committee. It was noted that the sheriff clerk proposed in Paper 6.1B as a committee observer would no longer be able to commit to this work and that an appropriate alternative would be identified by the Secretariat in consultation with SCS Field Services. **It was agreed that the remit should include that the Committee will have regard to other work underway in relation to the use of Alternative Dispute Resolution outwith the civil courts. Subject to this amendment, the remit and membership were approved.**
22. With committees being established on a thematic basis, the need for potential areas of overlap to be managed and delegated appropriately between committees was noted.

##### *Item 6.3 - ICT Committee*

23. Members considered the proposed remit and membership of the ICT Committee. It was considered that a Scottish Legal Aid Board representative should be added to the membership. It was also considered that, given his role in the MJW Enabling Technologies project, the SCS Director of Civil Courts Reform should be a committee member in place of the SCS IT Director, who should instead receive papers. In terms of the remit, it was agreed that this should be expanded to ensure that the Committee would take account of other systems improvement work ongoing, such as the development of the Justice

Digital Strategy. **Subject to these amendments, the remit and membership were approved.**

*Item 6.4 - Sheriff Principal Taylor's Review and establishment of a Cost and Funding Committee [Papers 6.4 and 6.4A]*

24. Members noted Sheriff Principal Taylor's recommendations and that the Secretariat, in conjunction with the Lord President's Private Office and Scottish Government officials, were giving detailed consideration as to what may be required, in terms of legislation, for any implementation of those recommendations. **It was agreed that a Costs and Funding Committee should be established to consider, among other things, the implications of Sheriff Principal Taylor's recommendations and that, for expedience, the remit and membership should be considered by correspondence.** Members were asked to submit expressions of interest in committee membership to the Secretariat by 7 October 2013.
25. It was remarked that the work of this Committee in particular would be of interest to the Council as a whole and that it would be important to ensure the Council is kept fully informed of its work.

*Item 6.5 - Rules Rewrite Working Group [Paper 6.5]*

26. Members noted the membership of the RRWG and that it is due to report in spring 2014. It was noted that the preparation of proposed 'simple procedure' rules would be taken forward outwith the RRWG, which was primarily concerned with the methodology of the Rules Rewrite Project. **It was felt that consideration should be given to expanding the membership of the RRWG to include lay members once the Group's interim report, addressing the technical questions as to the methodology, had been produced.**

## **Item 7: Secondary Legislation**

*Item 7.1 - Policy team guidance [Papers 7.1 and 7.1A]*

27. Pending a more detailed document to be produced under the auspices of the RRWG, the Council considered draft guidance intended for use by groups or individuals wishing to propose changes to court rules. **Subject to the Criminal Courts Rules Council's consideration, it was agreed that the document should be issued, and made available on the SCJC website. However, it was considered that it should be retitled 'Explanatory Notes on Requesting Court Rules'.**

*Item 7.2 - Consultation on the Extension of Simplified Divorce [Papers 7.2, 7.2A and 7.2B]*

28. Roddy Flinn spoke to papers under item 7.2, which sought the Council's views on the Family Law Committee's recommendation that a consultation should be carried out on the policy to extend simplified divorce proceedings in certain circumstances. **The Council supported the general approach. However, in light of the Scottish Government's planned consultation on the disapplication of the requirement for third party evidence in the proceedings in question, it was decided not to run a consultation on the policy to extend simplified divorce proceedings.**

*Item 7.3 - Court of Session Miscellaneous Amendments Instrument in respect of the Proceeds of Crime Act 2002 [Papers 7.3 and 7.3 A-E]*

29. Members considered a set of draft instruments proposing to amend the Rules of the Court of Session and the Summary Application Rules in respect of applications under subordinate legislation enabled by the Proceeds of Crime Act 2002. **The Council approved the draft instruments and agreed that they should be submitted to the Court of Session in due course.**
30. **There was some discussion about the content of the explanatory notes in the various instruments under consideration. Ian Maxwell agreed to provide comments to the Secretariat separately, prior to the instruments being submitted to the Court of Session.**

*Item 7.4 - Sheriff Court Miscellaneous Amendments Instrument in respect of Adults with Incapacity [Papers 7.4 and 7.4A]*

31. Members considered a draft instrument proposing to amend the Summary Application Rules principally in order to address concerns in relation the service of certain applications which had been raised by Sheriff Baird. **The Council approved the draft instrument and agreed it should be submitted to the Court of Session for inclusion in the next miscellaneous instrument.**

*Note of thanks*

32. **The Council wished to extend its gratitude to Sheriff Baird for his assistance in this matter and instructed the Secretariat to write to him formally in this regard.**

*Item 7.5 - Court of Session Miscellaneous Amendments Instrument in respect of urgent disposal of reclaiming motions and appeals [Papers 7.5, 7.5A and 7.5B]*

33. Members considered a draft instrument proposing to amend the Rules of the Court of Session so as to require parties reclaiming or appealing against an interlocutor containing an order under section 11(1) of the Children (Sc) Act 1995 to enrol for urgent disposal of the reclaiming motion or appeal. **The Council approved the draft instrument and agreed that it should be submitted to the Court of Session for inclusion in the next miscellaneous instrument.**

**Item 8: A.O.C.B**

34. **The Secretariat was asked to take forward arrangements for members to receive training on rule drafting.**

**Scottish Civil Justice Council Secretariat**

**November 2013**