

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 25 April 2022 AT 10.30AM

APEX HOTEL, WATERLOO PLACE, EDINBURGH

MINUTES

Present: Lord President (Chair)
Lady Carmichael
Employment Judge D’Inverno
Thomas Docherty
Colin Lancaster (SLAB)
Brandon Malone
Denise Swanson (Scottish Government)
Sheriff Way

In attendance: Lady Wise (for item 5.2)
Ysabeau Middleton (Lord President’s Law Clerk)

Support:
Jessica Flynn (SCJC)
Kelly Jack (SCJC)
Craig McCorkindale (Director of Strategy, SCJC)
Edward McHugh (Lord Presidents Private Office)
Paula Preston (SCJC)
Karen Stewart (SCJC)
Graeme Welsh (Secretary, SCJC)

Apologies: Lynda Brabender QC
Joel Conn
Jaqueline Harris
Sheriff Hughes
Eric McQueen (SCTS)
Catherine Smith QC
Craig Anderson

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed members and attendees to the forty-seventh meeting of the Council. There were seven apologies.
2. The Council agreed not to publish papers 4.1, 5.1, 5.1 A – D, 5.2, 5.2A and 5.3.

Item 2: Previous meeting

Item 2.1 - Items by correspondence (Paper 2.1)

3. The Chair introduced paper 2.1 which provided information on the one matter considered by correspondence since the last meeting:

- Paper 2022/05 - invited members to consider and approve the draft minutes from the Council Strategy Meeting which was held on 14 March 2022. In considering items by correspondence, a nil response indicates consent. One response was received approving the draft minutes. The approved minutes were subsequently published on the Council's website.

4. **The Council noted the paper.**

Item 3: Work programme

Item 3.1 - Age of Criminal Responsibility Act 2019 (Oral update)

5. Graeme Welsh provided an update. As of 22 April 2022, no applications had been made under the provisions of the Act. The working group of the Family Law Committee, chaired by Sheriff Tait, has discussed the development of child friendly forms and potential amendments to court rules.

6. **The Council noted the update.**

Item 4: Justice System Reform

Item 4.1 – Judicial Rate of Interest (Paper 4.1)

7. The Chair introduced paper 4.1 which provided background information and various options for amending the judicial rate of interest. The Council discussed the options and concluded that:

- Further research may be of little benefit given the extent of research set out in the Scottish Law Commission Report on Debt and Damages;
- Further attempts to engage other UK jurisdictions are likely to be unsuccessful based on the latest responses received;
- Given how the setting of other interest rates is enshrined in legislation, it may be worth exploring alternative options such as the potential involvement of the Government Actuary; and

- Further work is required to clarify the policy objectives that should inform the mechanism used for setting the rate.

8. The Council requested a further policy paper to clarify the overarching policy objective in setting the judicial rate of interest.

Item 5: Rules Review/Proposals

Item 5.1 – Simple Procedure Review (Papers 5.1, 5.1A – D)

9. The Chair introduced paper 5.1, which provided background information on the Simple Procedure review, which had been undertaken by the Access to Justice Committee. Paper 5.1A detailed the principal rule changes included within the draft instrument and paper 5.1B set out the schedules of forms and standard orders.
10. In 2017 a post-implementation review of Simple Procedure was initiated to coincide with an operational review of the rules being conducted by the Scottish Courts and Tribunals Service. The key objective was to obtain comprehensive feedback on the 'core' rules in order to implement any necessary rule changes prior to the introduction of the new rules on 'special claims'. The review's focus was to be on the operation of the rules, forms and standard orders. A further review at a later date will ascertain whether the overarching policy intentions of Simple Procedure have been met.
11. The Committee obtained comprehensive feedback via: a public consultation which closed on 31 May 2018; research commissioned from the University of Glasgow into the experiences of party litigants using Simple Procedure; and, a report from SCTS on the operation of simple procedure from the courts' perspective. That assisted the Committee in identifying relevant changes which would make Simple Procedure more operationally efficient for all court users.
12. Members discussed the provisions of the rules instrument which make changes to the rules, forms and standard orders:

Rule changes

13. Amendments made within the rules will: clarify procedures for formal service and electronic service by e-mail; clarify procedures for the issue of a decision /alternative decision forms, the recall of decisions and hearings on expenses; improve the procedures for lodging documents and other evidence with the court before a hearing; and clarify the sheriff's powers to ensure the effective management of cases.

14. The application forms have been streamlined as far as possible by consolidating several forms into a flexible 'Additional Orders Application' by which the parties can ask the sheriff to make any orders. Part 9 of the rules is accordingly deleted and substituted by a new Part 9 regulating the procedure for these applications. The rules in Part 9 include: provisions on the manner of application for, intimation of and objection to, an order; the court's handling of orders; and procedures for pausing a case, for a person becoming an additional respondent and for circumstances if a party dies or becomes legally incapacitated.

Forms and standard orders

15. The content of the claim form and response form are streamlined and a new standard form (Form 9A) 'Additional Orders Application' is provided.

16. The following forms are omitted and replaced by the new Form 9A: Form 3B (further claimant form), Form 3C (further respondent form), Form 3E (change of timetable application), Form 9A (application to pause), Form 9B (application to restart), Form 9C (additional respondent application), Form 9D (application to amend), Form 9E (abandonment notice), Form 9F (application to represent), Form 9G (incidental orders application), Form 10B (recovery of documents application), Form 10C (application to open confidential document), Form 10D (special recovery of documents application).

17. Other forms and standard orders have been revised and the content streamlined to take account of consultation feedback and to align with the overall procedural rule changes made throughout the instrument.

- *Form 3A (claim form) and Form 4A (response form)* - now include party details and orders sought in a summary front page and all sections of the forms relating to contact preferences now incorporate options for: online (i.e. via the civil online portal), by post and by email. Form 13A (decision form) is revised and includes a section for noting the sheriff's reasons (where they have taken time to consider the decision). In addition, a new approach to formatting has been adopted to improve the accessibility of the forms.
- *Standard orders SO1, 2 and 7 to 10* - are revised to make reference to the new Additional Orders Application and related amended court procedures; a new standard order, SO3, merges existing standard orders SO3 and 4 to streamline and simplify the process of making a decision without a hearing in appropriate cases; standard order SO6 is revised to warn the recipient about the potential outcomes of non-compliance with an 'unless order';

and, a new standard order, SO14, is provided for use in cases with additional respondents.

Savings provisions

18. The revised rules, forms and standard orders will apply to claims lodged on or after the date of commencement of the instrument. Any actions lodged or in dependence prior to commencement will be unaffected by rule/form changes. This means that, for a period, there will be two sets of rules and forms operating in parallel until older cases wind their way to conclusion and eventually the forms etc. omitted by this instrument can be phased out. SCTS advise that Civil Online will be updated to handle cases proceeding under both sets of provisions.
19. **The Council approved the draft rules instrument (Paper 5.1A), and the related Schedules of Forms and Standard Orders (Paper 5.1B), for onwards submission to the Court of Session for its consideration and approval, subject to any stylistic or typographical amendments.**
20. **The Council agreed that no policy note is required to accompany this rules instrument when it is laid in parliament.**

Item 5.2 – Case Management in Family Actions (Papers 5.2 and 5.2A)

21. The Chair invited Lady Wise to introduce Papers 5.2 and 5.2A. These papers invited members to consider and approve draft rules relating to the case management of family and civil partnership cases in the sheriff court.
22. The new rules are intended to improve the operation of sheriff court family actions through the introduction of a two-stage process, with interim case management hearings and final case management hearings. The objective is to enable consistent and effective case management of family and civil partnership cases, with particular regard to preventing undue delay in proceedings relating to the welfare of children.
23. The rules respond to recommendations 50, 77, 117 and 121 of the Scottish Civil Courts Review, in relation to family and civil partnership actions.
24. **The Council approved the draft rules instrument in Paper 5.2A for submission to the Court of Session for consideration and approval, subject to any stylistic or typographical amendments.**
25. **The Council agreed that a policy note should be prepared to accompany the rules instrument when it is laid in parliament.**

Item 5.3 – Reporting Restriction Orders (Paper 5.3)

26. The Chair introduced paper 5.3 which provided an update from the working group that is considering the submissions from the BBC and the Scottish Government; on the potential non-compliance by the courts with the procedural rules for the making of reporting restriction orders.
27. The issue has been considered by the working group and drafting instructions have been issued for the preparation of a draft rules instrument. The working group has also considered the provision of additional support including:
- The development of a judicial toolkit and related training for new and recently appointed judicial officer holders;
 - Updates to SCTS staff guidance; and
 - Updates to Practice Note 01/2015.
28. Once the draft rules have been considered and approved by the working group, they will be submitted to Council for consideration.
- 29. The Council noted this update.**

Item 6: AOB

30. The Council noted that the Scottish Government Coronavirus Bill is nearing stage 2.

Item 7: Dates of Future Meetings

- Monday 18th July 2022
- Monday 24th October 2022

**Scottish Civil Justice Council Secretariat
April 2022**