

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**  
**MONDAY 18 MARCH 2024 AT 10.30AM**  
**JUDICIAL INSTITUTE TRAINING SUITE**  
**L-2, PARLIAMENT HOUSE, EDINBURGH**

**Present:** Lord President (*Chair*)  
Lady Carmichael  
Fiona Drysdale KC  
Thomas Docherty  
Lord Ericht  
Nicola Irvine  
Catherine Smith KC  
Sheriff Martin-Brown  
Riley Power (*SCTS – attending for Eric McQueen*)  
Sheriff Principal Ross  
Sheriff McCartney  
Denise Swanson (*Scottish Government*)

**In attendance:** Rachel Grant (LIT)  
Andrew Campbell (LPPO)

**Support:** Jessica Flynn (Secretariat)  
Craig McCorkindale (Secretariat)  
Sarah Jane McNicol (Secretariat)  
Paula Preston (Secretariat)  
Karen Stewart (Secretariat)  
Graeme Welsh (Secretariat)

**Apologies:** Colin Lancaster (*SLAB*)  
Eric McQueen (*SCTS*)  
Iain MacRae  
Sheriff Way

**Item 1 - Opening comments**

1. The Chair welcomed members to the fifty third meeting of the Council and noted the apologies received from members. This session provides members with a key opportunity to help shape the work programme for the coming year.
2. The Council agreed not to publish the background papers (*Flag A, B and C*).

## Item 2 - This year's Work Programme (2023-24)

### 3. Members noted:

- The Targeted Consultation on the new Ordinary Procedure Rules;
- The Annual Update on the pending transfer of Tribunal Rules; and
- The 7 rules instruments "laid and made" within the 2023-24 planning period.

| WORKFLOW             | RULES INSTRUMENTS MADE & LAID   | COMMENCING                   |
|----------------------|---|------------------------------|
| RULES REVIEW         |   |                              |
| MODERNISATION        | Attendance at Hearings (SSI 2023/168)   | 3 Jul 23                     |
| OTHER REQUESTS       | Reporting Restriction Orders (SSI 2023/196)   | 2 Oct 23                     |
| COMMENCEMENT OF ACTS | Telecommunications Infrastructure (LP) Act 2021 (SSI 2023/223)<br>National Security Act 2023 (SSI 2024/ .. )<br>Payment & Electronic Money I Insolvency Reg. 2021 (SSI 2024/75) | 2 Oct 23<br>TBC<br>12 Apr 24 |
| FEES RULES           | Solicitors Fees (SSI 2023/165)<br>SMASO Fees (SSI 2024/41)  | 30 Jun 23<br>22 Mar 24       |

## Item 3 - Next year's Work Programme (2024-25)

4. Annex 1 lists the total of 41 rules requests in the pipeline, which forms the opening balance for the 2024-25 planning period.

### COURT RULES - The pipeline of 36 rules requests

5. An update was given on each of the 36 outstanding rules requests with the following points noted from that discussion:

*Group Proceedings* – a potential working group on the “opt out” option may be convened at some future point. Some members offered to participate whenever that work might proceed. That includes Lord Ericht, Thomas Docherty, Catherine Smith and Sheriff McCartney.

*Hague Convention* – at Lady Carmichael’s request the secretariat is already researching what is additionally required for compliance with the Hague Convention. An additional rules request may be logged in the coming weeks.

*Lay Representation* – an increasing incidence of Party Litigants appearing in cases may justify this rules request being progressed more quickly. The amended rules should make it clear what happens if a lay rep appears in the absence of the party whom they represent.

*Pre Action Protocols* – some members are being lobbied by those who would prefer to see a greater priority given to pre action protocols.

*Protective Expenses Orders* – final changes have been made to this amending rules instrument so that it can be considered by the Cost and Funding Committee in April / May 2024. It should then be tabled for approval at the June 2024 meeting of the Council.

*Service by post* – as the Post Office may be changing from its six day delivery obligation (universal service obligation), then any rules with timings for valid service may require amendment.

FEES RULES - The pipeline of 2 rules requests

6. The Costs and Funding Committee is progressing the fee structures to support the 2 new Pre Action Protocols.

INQUIRIES RULES - The pipeline of 1 rules request

7. The planned discussion of Fatal Accident Inquiry rules with the Crown Office remained subject to the availability of resources.

TRIBUNAL RULES – The pipeline of 2 requests (in preparation for the transfer)

8. The Annual Update (**Flag B**) which was circulated “for information” prior to this meeting was noted along with:
  - The 2 jurisdiction transfers completed within the 2023-24 period (*for the local taxation chamber and transport appeals*); and
  - The 4 jurisdiction transfers that remain to establish fully the 2 tier structure.
9. **Members agreed that any negotiations on the future transfer of responsibility for tribunal rules should continue to be deferred (until 2026-27 at the earliest).**

ENVIRONMENTAL SCANNING

10. Pending Bills are proceeding through parliamentary scrutiny in both the UK and the Scottish Parliaments. Where a Bill impacts on civil business, it could result in a rules requests in due course:

| WORKFLOW                                  | POLICY TOPIC   | Page count |
|---|--|------------|
| PARLIAMENTARY SCRUTINY OF BILLS – 8 X SG  | National Care Services Bill                            | 38         |
|   | Regulation of Legal Services (Scotland) Bill           | 120        |
|   | Victims, Witnesses, and Justice Reform (Scotland) Bill | 68         |
|   | Bankruptcy and Diligence (Scotland) Bill               | 12         |
|   | Social Security (Amendment) (Scotland) Bill            | 54         |
|   | Housing (Cladding Remediation) (Scotland) Bill         | 20         |
|   | Judicial Factors (Scotland) Bill                       | 38         |
| PARLIAMENTARY SCRUTINY OF BILLS – 4 X UKG | Financial Services and Markets Bill                    | 347        |
|   | Retained EU Law (Revocation and Reform) Bill           | 104        |
|   | Economic Crime and Corporate Transparency Bill         | 376        |
|   | Digital Markets, Competition and Consumers Bill        | 386        |

## Item 4 – Deciding the Priorities

*The methodology when setting priorities:*

11. A “carry forward” approach had been used when narrating Council priorities in previous years. That approach meant that, once a policy item was listed as a priority within one year, it would remain on that list for multiple years until that rules request was closed. As policy items often require a multi-year programme of work, adding qualifying information will better convey the nature of the actual work to which the Council was committed within any one planning period. For example, the plan may be to undertake a literature review in year 1, to consult in year 2, and to have the resultant rules instrument laid in year 3.

**12. Members agreed to change to a “clean sheet” approach when setting annual priorities. The items listed should better reflect the nature of the policy and legal work to be progressed within that specific period.**

*The priority items for the coming year:*

13. The variable size of each of the 41 requests in the pipeline (*Annex 1*), particularly those big ticket items with multi-year work programmes, was noted.

**14. Members agreed to list 8 items as priorities, in which substantive progress is expected to be delivered during the 2024-25 planning period:**

Consultations:

- A consultation - on the next set of proposals for the new Ordinary Procedure Rules ;
- A consultation - on the extension of simplified divorce;
- A consultation - on simple procedure special claims;
- A consultation – on the withdrawal of the walls of court; and
- A consultation – on the withdrawal of signeting,

Rules instruments to be laid and made:

- For the Inner House rules;
- For Protective Expenses Orders; and
- For the commencement of the United Nation Convention on the Rights of the Child (Scotland) Act 2024.

*Keeping the justice system under review*

15. Members discussed the statutory responsibility of the Council to keep the wider civil justice system under review. This included identifying any areas that might be considered problematic by some. The following points were noted:

*Environment Court* – during 2023 the Scottish Government did issue a policy statement confirming that a specialist court would not be justified in Scotland.

*Commissary* – various news articles have raised the increasing incidence of contested estates. The planned “Consultation on withdrawal of the walls of court” may include a proposal that applications for appointment of an Executor Dative should require direct intimation (rather than relying on online intimation and caveats).

*Third parties providing advice in family actions* – there have been some policy questions arising around who should (or should not) be instructed to provide therapy to help resolve issues in a family action, along with how those therapists might be paid.

**Item 5 – Closing Comments**

16. The Lord President thanked members for their contributions to the development of the annual work programme and closed the workshop.

## ANNEX 1 – THE OPENING BALANCE – OF 41 RULES REQUESTS

The 8 items set as the priorities for 2024-25 are shown in **bold**

### COURT RULES (36):

| Count | Item      | Category      | Description   |
|-------|-----------|---------------|---|
| 1     | F37 / F74 | Rules Review  | Pre Action Protocol - Personal Injury   |
| 2     | F72       | Rules Review  | Withdrawal of Agents (RCS Chap. 30)   |
| 3     | F77 / A1  | Rules Review  | <b>Inner House Rules</b>  |
| 4     | D2        | Rules Review  | <b>Protective Expenses Orders (PEO's)</b>   |
| 1     | A2        | Modernisation | <b>Rules Rewrite (the New Civil Procedure Rules)</b>  |
| 2     | -         | Modernisation | <b>Simple Procedure Special Claims (SPSC)</b>   |
| 3     | F5        | Modernisation | Lay representation, lay support and party litigants   |
| 4     | F86       | Modernisation | Pre Action Protocol - Clinical negligence   |
| 5     | F87       | Modernisation | Pre Action Protocol – Disease   |
| 6     | F93       | Modernisation | Caveats   |
| 7     | -         | Modernisation | Interveners ( <i>consolidated chapter</i> )   |
| 8     | -         | Modernisation | Group Proceedings Part2 ( <i>review for an opt out procedure</i> )  |
| 1     | E10       | Other Request | Public Interest Interventions   |
| 2     | F62       | Other Request | Appointment of Assessors ( <i>under the Equality Act 2010</i> )   |
| 3     | F3        | Other Request | <b>Extension of Simplified Divorce</b>  |
| 4     | -         | Other Request | Historic Abuse – Nominal Defenders  |
| 5     | -         | Other Request | E-Motions   |
| 6     | F89       | Other Request | Pursuers Offers ( <i>for PI cases under £5k</i> )   |
| 7     | F90       | Other Request | Lodging objections in a Diet of Taxation  |
| 8     | F94       | Other Request | Inhibition in execution   |
| 9     | F95       | Other Request | Postal copies ( <i>of documents served</i> )  |
| 1     | B34.B     | Acts          | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - <i>Sec 9</i>  |
| 2     | B34.C     | Acts          | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - <i>Sec 10</i>   |
| 3     | B34.D     | Acts          | Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - <i>Sec 11</i>   |
| 4     | B37       | Acts          | Damages (Investment Returns and Periodical Payments) (S) Act 2019   |
| 5     | -         | Acts          | Civil Partnership (Scotland) Act 2020   |
| 6     | B40       | Acts          | Children (Scotland) Act 2020  |
| 7     | B43       | Acts          | UK Withdrawal from the European Union (Continuity) (S) Act 2021   |
| 8     | -         | Acts          | Defamation and Malicious Publication (Scotland) Act 2021  |
| 9     | B42       | Acts          | Domestic Abuse (Protection)(Scotland) 2021  |
| 10    | -         | Acts          | Coronavirus (Recovery and Reform) (Scotland) Act 2022 – including a<br>- <b>Consultation on withdrawing the signet</b><br>- <b>Consultation on withdrawing the walls of court</b> |
| 11    |           | Acts          | Child Support (Enforcement) Act 2023  |
| 12    |           | Acts          | Moveable Transactions (Scotland) Act 2023   |
| 13    |           | Acts          | Hunting with Dogs (Scotland) Act 2023   |
| 14    |           | Acts          | <b>UNCRC (Incorporation) (Scotland) Act 2024</b>  |
| 15    |           | Acts          | Trusts and Succession (Scotland) Act 2024   |

### NEW FEES RULES (2):

| Count | Item | Category    | Description                                 |
|-------|------|-------------|---|
| 1     | F86  | Fees Review | Fee structure - for Clinical Negligence PAP |
| 2     | F87  | Fees Review | Fee structure - for Disease PAP             |

### NEW INQUIRY RULES (1):

| Count | Item | Category      | Description                            |
|-------|------|---------------|--|
| 1     | -    | Other Request | To seek COPFS views (on the FAI rules) |

### NEW TRIBUNAL RULES (2):

| Count | Item | Category      | Description  |
|-------|------|---------------|--|
| 1     | -    | Acts          | Annual Update - on the jurisdictions transferred ( <i>per the 2014 Act</i> ) |
| 2     |      | Modernisation | To establish the judicial objectives ( <i>for new tribunals rules</i> )      |