

## REVISION OF STANDING ORDERS

### Purpose

1. This paper invites members to consider and approve amendments to the Council's Standing Orders.

### Background

2. Section 12 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 provides that the Council may determine its own procedure and that of any committees established by it, except in relation to any quorum, which is to be determined by the Lord President.
3. On 30 June 2014, the Council approved and adopted its' standing orders. These were last revised in July 2022. The current version is provided at **Appendix 1**.

### Items by Correspondence

4. Between meetings the SCJC or its committees may consider matters by correspondence. Standing Order 4.13 of the current standing orders states:

*Where a decision on matter(s) is sought by members nil responses will be treated as indicating approval.*

5. To provide the opportunity for recording member's views on substantive matters where decisions are required. It is proposed that the standing order is amended to require a response in specific circumstances. Where an item by correspondence is issued, the covering paper and email will make it clear whether a nil response will be treated as indicating approval, or whether comments are invited from members. It is proposed the standing order is amended to include:

*Where a decision on specific matter(s) is sought, members will be required to respond within the timescales provided, if practicable.*

**Members are invited to consider and formally approve the proposed amendment.**

### Private papers

6. As a default, all SCJC and committee papers are marked as being private papers. At the commencement of each meeting the SCJC or relevant committee determines which papers are to be considered private in terms of standing order 8.3:

*Where those present at a meeting of the SCJC or any of its committees determine that any part of the business conducted is confidential, that part of the proceedings will be minuted separately and will not be published.*

7. In the spirit of open justice and increasing the transparency of the SCJC's work and decision making, it is proposed that the default is changed that each paper is marked as being open and only if the SCJC or relevant committee decide otherwise, should the paper be kept private and not published. Standing order paragraph 8.6 currently reads:

*At the commencement of each meeting the SCJC or relevant committee shall determine which papers are to be considered private in terms of standing order 8.3. Private papers include, but are not restricted to, advice (including legal advice), documents in draft (including draft rules, papers for publication and responses to consultations) and papers, which have been submitted to the SCJC in confidence.*

8. It is proposed that this is changed to:

*At the commencement of each meeting the SCJC or relevant committee shall agree all papers will be non-private and published along with minutes from the meeting unless otherwise agreed as per standing order 8.3.*

9. **Members are invited to consider and formally approve the proposed amendment.**

## **Recommendation**

10. **Members are invited to approve revisions to the Council's Standing Orders set out in this paper.**

**Scottish Civil Justice Council Secretariat  
June 2025**

**SCOTTISH CIVIL JUSTICE COUNCIL****STANDING ORDERS****(LAST UPDATED: July 2022)****1 General**

- 1.1 The Scottish Civil Justice Council ("SCJC") is established under Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ("the 2013 Act").
- 1.2 These standing orders, for regulation of the conduct and proceedings of the SCJC, are made under section 12 of the 2013 Act.
- 1.3 No standing order is to be made, read, applied or suspended in such a manner that contravenes any rule of law or legislative provision.
- 1.4 These standing orders are made by and can be altered or suspended, in whole or in part, by a majority of the members of the SCJC.
- 1.5 Where these standing orders do not make specific provision, the Chair of the SCJC, in consultation with the deputy to the Chair, will have discretion to determine all questions of procedure for the conduct and proceedings of the SCJC.
- 1.6 The following standing orders, in particular, shall apply to proceedings of any committees established by the SCJC as they apply to the SCJC, with any such modifications as are necessary :

General: 1.1- 1.3 and 1.7

Membership: 2.3 (a)-(d), 2.4-2.8

Ordinary Meetings: 4.2, 4.4-4.8, 4.10 – 4.15

Agenda: 5.1 and 5.2

Minutes and Publication of Papers: 8.1-8.6

Committees: 9.4-9.8

Communications: 11.1-11.8

Freedom of Information (Scotland) Act: 12.1-12.3

Confidentiality: 13.1-13.4

Members' expenses: 14.1

- 1.7 With the exception of Section 4: Registration of Interests, the Members' Code of Conduct at Annex A shall apply to members of any committee established by the SCJC, as they apply to members of the SCJC with any necessary modifications. Notwithstanding the fact that committee members are not required to register the interests listed at Section 4 of the Code of Conduct, those interests listed therein remain declarable under Section 5.

## **2 Membership**

- 2.1 Members are appointed to and hold office in the SCJC in accordance with the provisions of section 6 of the 2013 Act and the Lord President's Statement of Appointment Practice (made under section 7 of the 2013 Act).
- 2.2 Members are expected to subscribe to and comply with the code of conduct set out at Annex A.
- 2.3 Where a dispute arises as to whether a conflict of interest exists in respect of any member, the following procedure will apply:
- (a) in the event of the potential conflict arising during the course of a meeting the Chair will have the power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in that part of the meeting affected by the conflict;
  - (b) in the event that the potential conflict arises outwith a meeting then the Chair will have power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in the business affected by the conflict;
  - (c) before ruling in either of the circumstances set out in (a) or (b) above, the Chair may take views of other members of the SCJC as he or she deems necessary;
  - (d) a record of the area of potential conflict, the ruling reached and by whom will be retained.

### *Committees*

- 2.4 Each committee must have at least one SCJC member appointed to it.
- 2.5 An SCJC member's period of appointment to a committee will run concurrently with their appointment to the SCJC. Subject to standing orders 2.8 and 9.3,

committee members will be appointed for a period of three years, beginning from the date upon which the SCJC approved the appointment. On the expiry of a period of appointment, the SCJC may agree to appoint a member for further periods of up to three years.

- 2.6 Representatives of the Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and the Scottish Government have standing appointments to committees.
- 2.7 The Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and the Scottish Government may nominate one alternative representative to attend on behalf of a standing appointee to a committee.
- 2.8 A committee member may, by giving notice in writing to the Chair of the committee, resign as a member of a committee. An SCJC member may, by giving notice in writing to the Chair of the SCJC, resign as a member of a committee.
- 2.9 If the Chair of the committee and the Chair of the SCJC are satisfied that a member's attendance at meetings has been unsatisfactory or that the member is otherwise unable or unfit to discharge the functions of a member, they may, by giving notice in writing to the member, remove that person from the committee.
- 2.10 Where appropriate, periods of reappointment will be staggered to ensure some continuity of membership.

### **3 Chair of the SCJC**

- 3.1 Meetings will be chaired in accordance with section 11 of the 2013 Act. The Lord President is Chair.
- 3.2 Members must elect a member to act as deputy to the Chair.

### **4 Ordinary Meetings**

- 4.1 The SCJC will normally meet four times in each financial year. Meetings will be scheduled with a clear focus on business needs, on dates and at times and places determined by the SCJC and specified in the notice calling the meeting.
- 4.2 Notice of meetings, with an agenda detailing the business to be transacted, will be issued electronically to each member not less than seven days prior to the date of the meeting, confirming that relevant papers are available via the

members' portal. Late papers will be issued or tabled only in exceptional circumstances.

- 4.3 All decisions must be made by the members of the SCJC unless an individual or committee has been delegated to deal with a specific issue.
- 4.4 Decisions of the SCJC will generally be by consensus of those attending meetings.
- 4.5 Any matter put to the vote is decided by a simple majority. In the event of a tie, the Chair has a second vote. Only members present at a meeting may vote. Proxy voting is not allowed. Members departing early will be treated as non-attending for the purpose of any decision taken after the time of departure.
- 4.6 Decisions of the SCJC are binding on members.
- 4.7 Members have a duty not to comment on any matter in any way that undermines the principle of collective responsibility for decisions of the SCJC.
- 4.8 Notwithstanding standing order 4.7, a member may have his/her dissent to a decision of the SCJC recorded provided he/she has attended for the whole of the discussion and decision, and asks to record his/her dissent immediately after the decision is concluded. The recording of any such dissent shall not, however, affect standing order 4.6.
- 4.9 No business shall be transacted at a meeting unless there are present at least seven members, of whom at least three are non-judicial members.
- 4.10 The Chair will regulate discussion and debate and will ensure that all present enjoy equality of opportunity to express their views.

### *Committee Meetings*

- 4.11 Where the Chair is unable to attend a committee meeting and with the approval of the Chair of the SCJC, he or she shall in advance of that meeting, nominate a member to act as Chair for the purposes of that meeting.
- 4.12 The quorum of a committee meeting is one in excess of half the membership, and this must include, subject to rule 4.11, the Chair. However, when not quorate the members present may decide to proceed with a meeting at which items on the agenda are considered and any recommendations reached are put to the next committee meeting for decision if time allows or otherwise are put to the SCJC for decision, with a clear statement that the meeting had not been quorate.

*Items by correspondence*

- 4.13 Between meetings the SCJC or its committees may consider matters by correspondence. Where a decision on matter(s) is sought by members nil responses will be treated as indicating approval.
- 4.14 Notwithstanding rule 4.13, any such matter subject to consideration by correspondence maybe tabled for discussion at a SCJC or committee meeting (as the case may be) at the request of any member.

A summary of the outcomes of Items by Correspondence will be published on the Council's website.

**5 Agenda**

- 5.1 Any member may propose an item for the Agenda of an Ordinary meeting by contacting the Secretariat not less than 15 working days before the date of the meeting.
- 5.2 Any member wishing to raise an urgent item at the meeting must give notice at the start of the meeting. The members present will decide whether any such item will be discussed or dealt with at a subsequent meeting.

**6 Extraordinary Meetings**

- 6.1 The Chair may call a meeting of the SCJC at any time and shall do so on receipt of a formal request which specifies the business to be transacted at the meeting and which has the support of one third of the whole number of members of the SCJC. A formal request under this standing order shall be sent to the Secretariat.

**7 Court of Session consultation with the SCJC**

- 7.1 In the event that the Court of Session consults the SCJC in relation to proposals to make rules in respect of sheriff court or Sheriff Appeal Court proceedings under section 104 of the Courts Reform (Scotland) Act 2014, the matter will be tabled for consideration at the next appropriate meeting or issued to members to consider as an item by correspondence<sup>1</sup>.

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<sup>1</sup> Section 104(5) of the Courts Reform (Scotland) Act 2014 provides that the Court of Session, when making rules for the sheriff court of its own accord, must consult the SCJC and take into consideration any views expressed by it, before making those rules

- 7.2 In the event that the rules being consulted upon are proposed to be made as a matter of emergency and where time does not permit the convening of an extraordinary meeting or for the matter to be considered by correspondence (for instance where a delay in making rules is likely to be seriously detrimental to the interests of justice or to be contrary to legislation), consultation may instead take place with at least one Sheriff Principal and one sheriff member of the SCJC. For the purposes of section 104(5) of the Courts Reform (Scotland) Act 2014, any views expressed by those members are to be the views expressed by the SCJC.
- 7.3 On every occasion standing order 7.2 is invoked, the circumstances will be reported to all members at the earliest opportunity and recorded in the minutes of the next SCJC meeting.

## **8 Minutes and publication of papers**

- 8.1 Minutes will be kept of each meeting of the SCJC recording the members present, apologies tendered and accepted for non-attendance, issues considered, decisions reached and resolutions passed.
- 8.2 Within fifteen working days of a meeting, draft minutes (as revised or approved by the Chair) will be issued via the website portal and members will be invited to provide comments within 7 working days. A nil response will be treated as indicating approval of the draft minutes. When approved, the minutes will be published on the website in their final form and no later than 22 working days after the date of the meeting (15 working days for drafting and Chair to approve, 7 working days for members to consider and comment).
- 8.3 Where those present at a meeting of the SCJC or any of its committees determine that any part of the business conducted is confidential, that part of the proceedings will be minuted separately and will not be published under standing order 8.2.
- 8.4 All or part of a SCJC or committee meeting may be held in the absence of non-members where those present determine that their presence may hinder free and open discussion of an item of business.
- 8.5 Agendas, papers and finalised minutes for meetings will be made available to the public and published online within 22 working days of a meeting, excluding: draft rules, private papers and any papers or part thereof relating to an item determined to be confidential under standing order 8.3.



*Private Papers*

- 8.6 At the commencement of each meeting the SCJC or relevant committee shall determine which papers are to be considered private in terms of standing order 8.3. Private papers include, but are not restricted to, advice (including legal advice), documents in draft (including draft rules, papers for publication and responses to consultations) and papers which have been submitted to the SCJC in confidence.

**9 Committees**

- 9.1 Committees established under section 13 of the 2013 Act will operate strictly in accordance with the terms of their remit.
- 9.2 When establishing committees, the SCJC will:
- (a) determine the membership;
  - (b) select or confirm the arrangements for chairing of the committee meetings;
  - (c) establish the terms of reference (in consultation with the Chair of the committee);
  - (d) unless determined otherwise during the establishment of a committee the standing orders noted in paragraphs 1.6 and 1.7 of these standing orders shall apply to all committees.
- 9.3 The SCJC will review its committee structure at least annually.

*SCJC's delegated authority to its committees*

- 9.4 Delegated authority for each committee is contained in the remit for each committee as agreed by the SCJC. This includes consideration at first instance of correspondence, policy proposals or requests for rules which fall within the committee's remit. The SCJC may delegate specific matters to committees through its annual business programme or on an ad hoc basis.
- 9.5 Generally, committees are expected to take matters as far as appropriate before making recommendations to the SCJC. Where items are routine they will stay with the committee until the final stage of decision-making.

- 9.6 Nothing in these standing orders or the remit of any committee affects the ability of the SCJC to deal with any matters at first instance that might otherwise fall to a committee.

*Reporting of committees*

- 9.7 The Secretariat will provide a report on the activity of the Council and its committees at each SCJC meeting.
- 9.8 Each year, committees will prepare and submit to the SCJC a report on their activity for that year (beginning 1 April) for the purposes of the preparation of the SCJC annual report.

*SCJC's delegated authority to its Secretariat*

- 9.9 The Secretariat to the SCJC has authority to:
- (a) respond to consultations on behalf of the SCJC where:
    - (i) it appears to the Secretariat that nothing in the consultation engages the SCJC's interests; and
    - (ii) a formal response only is required;
  - (b) deal with any correspondence relating to a matter outwith the remit of the SCJC, to include forwarding that correspondence to any other public authority which the Secretariat considers to be better placed to deal with the matter.
- 9.10 The Secretariat may at any time consult the Chair of the SCJC (or in his absence the Deputy Chair) as to the proposed exercise of the delegated, functions, and must do so if the Secretariat considers that the matter in question may be controversial.

**10 Decisions Reserved for the SCJC**

- 10.1 The following decisions are reserved for the SCJC:
- (a) annual programme and annual report;
  - (b) standing orders;
  - (c) the establishment of terms of remit and reporting arrangements for all committees acting on behalf of the SCJC;
  - (d) membership of committees.

## 11 Communications

### *Communications with the public*

- 11.1 The SCJC website will be the primary means for communicating the activities of the SCJC and committees to the public. The Secretariat will maintain the website and publish information held by the SCJC to it in accordance with the SCJC's [publication scheme](#).
- 11.2 The Secretariat will receive and log all correspondence to and from the SCJC. Any such correspondence received or sent by an individual member in relation to the SCJC will be copied to the Secretariat for this purpose.
- 11.3 The Secretariat will present significant items of correspondence to the SCJC or *relevant committee*, with the *relevant* Chair's approval.

### *Communications with members*

- 11.4 Correspondence with Council and committee members will primarily be via email. This includes advising when papers are available via the members' portal. The Secretariat will make adjustments or provide documents in alternative formats where these are required by persons with additional needs.

### *Communications with the press*

- 11.5 The Secretariat will liaise with the press as required on behalf of the SCJC, including as to the following:
- (a) promoting the work of the SCJC in accordance with an agreed communication strategy;
  - (b) issuing press releases on Council activities and on developments relating to the SCJC's work;
  - (c) responding to press queries.
  - (d) the Secretariat will present any significant items to the Chair, *or relevant committee Chair*, for approval.
- 11.6 Members who receive enquiries from the press should pass these to the Secretariat. Where a member wishes to undertake promotional activity in their

official capacity without the SCJC's prior agreement (or if delegated to a committee, without the committee's prior agreement), they will seek the Chair's approval through the Secretariat.

#### *Public statements*

- 11.7 Public statements concerning the SCJC will normally be made by the Chair, or by the Secretariat acting on behalf of the Chair.
- 11.8 Public statements concerning the work of a committee may be made by the Chair of that committee, or by the Secretariat acting on behalf of the committee Chair.

## **12 Freedom of Information (Scotland) Act 2002**

- 12.1 The Secretariat will log and maintain all significant and relevant documents and information pertaining to the SCJC in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Data Protection Act 1998.
- 12.2 The Secretariat will respond to requests made under FOISA on behalf of the SCJC. The Secretariat will seek the approval of the Chair, or relevant committee Chair, in respect of all non-routine requests as to any response.
- 12.3 Where information is requested which contains individual SCJC or committee members' opinions, or which relates to a SCJC or committee member in particular, the Secretariat will notify the member(s) in question of the request and consult them before releasing any such information (where that is in contemplation). Such notification and consultation will be subject to members' availability and the applicable time limits under FOISA.

## **13 Confidentiality**

- 13.1 All members, the Secretariat and any other person present at Council and committee meetings, have a duty:
- (a) not to discuss items of business agreed under standing order 8.3 to be confidential with any person who was not present at that meeting unless authorised to do so by the Chair;
  - (b) not to disseminate correspondence not otherwise publicly available (including agendas, papers, draft rules and minutes of meetings, or parts thereof) beyond the membership or the Secretariat, except with the approval of the Chair.

- 13.2 The Secretariat will ensure that members' attention is drawn to any confidential items.
- 13.3 Decisions as to whether an item is confidential will be made by the Secretariat with regard to statutory obligations and in accordance with the [publication scheme](#). Where there is any doubt as to whether an item should be treated as confidential, the Chair will determine the matter.
- 13.4 This standing order is without prejudice to the terms of the Public Interest Disclosure Act 1998.

#### **14 Members' expenses**

- 14.1 Members and committee members will be entitled to claim for costs associated with Council business in accordance with the [Expenses Scheme](#) set by the Scottish Courts and Tribunals Service (SCTS).