

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 22 JANUARY 2018 AT 10.30 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES

Members Present: Lord President (Chair)
Jan Marshall (Scottish Government)
Eric McQueen (Chief Executive, SCTS)
Lord Menzies
Lord Boyd of Duncansby
Lord Tyre
Sheriff Principal Abercrombie QC
Sheriff Hughes
Kenneth Campbell QC
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Elena Fry (Solicitor)
Ian Maxwell (Consumer representative)
Jane Williams (Consumer representative)
Employment Judge Joseph d’Inverno (LP member)
Brandon Malone (LP member)

In attendance: Diane Machin (Deputy Principal Clerk of Session, SCTS)
Jane MacDonald (Legislation Implementation Team, SCTS)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Support: Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Katherine Marshall (Head of Rules Rewrite Drafting Team)
Norman Munro (Deputy Legal Secretary, Lord President’s Private Office)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Lauren Gibb (Policy Officer, Scottish Civil Justice Council)

Apologies: Sheriff Murphy QC
Colin Lancaster, Scottish Legal Aid Board
Lynda Brabender QC

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Murphy, Colin Lancaster and Lynda Brabender QC.
2. The Chair welcomed Katherine Marshall to her first meeting. Katherine has recently replaced Kenny Htet-Khin as the Head of the Rules Rewrite Drafting Team.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **The minutes were approved.**

Item 2.2 – Activity since last update (Paper 2.2)

4. **The progress that had been made on actions since the last meeting and the activity report on the work of the Council's Committees were noted.**

Item 2.3 – Items by correspondence (Paper 2.3)

5. **Paper 2.3, which advised of the outcome of consideration of matters by correspondence since the last meeting, was noted.**
6. One matter had been considered in relation to committee membership:
 - **Paper 2017/23** had been issued to members on 15 December 2017 and invited members to approve changes to committee membership. In particular, members were invited to:
 - approve the appointment of Andrew Henderson to the Costs and Funding Committee;
 - approve the appointment of Summary Sheriff Jillian Martin-Brown to the Access to Justice Committee; and
 - approve or, where appropriate, confirm the appointments for SCTS Court of Session observers for all committees.
 - **Responses were invited by close of business on Thursday 22 December 2017. Seven responses were received, all approving the arrangements.**

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments_(Oral)

Jan Marshall updated the Council on legislative developments since the last meeting.

7. The Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill had recently passed stage one on 16 January 2018 and was expected to progress to stage two in late February or early March.

8. A bill to reform the law on prescription was likely to be introduced in February 2018. The Scottish Government's consultation on court fees had recently closed with approximately twenty responses. These responses would be considered and the Scottish Government would publish its response to the consultation in due course.

Item 3.2 – SCTS Update (Oral)

9. Craig McCorkindale updated the Council on developments within SCTS and in particular the ICMS online case management system. The development of phase one of the project, online case tracking, was on track. Extensive testing was underway before phase one's planned launch in March.

10. Phase two of the ICMS project, online case submission, was well underway with development expected to finish around July 2018. The project will then move to testing which will be carried out throughout the remainder of this year.

Item 3.3 – Business Tracker (Paper 3.3)

11. **Paper 3.3, which provided an update of the Council's work, was noted.**

Item 3.4 – Brexit (Paper 3.4)

12. **Paper 3.4**, which provided the Council with an update about the Lord President's Private Office/SCTS' Brexit response planning and the proposed procedure for the approval of amendments to court rules required as a result of Brexit, was considered.

13. In **Paper 3.4** LPPO proposed that, in relation to Brexit related amendments, where time allows the normal procedure of rule drafting and approval should apply. In addition, for Court of Session rules, if amendments are required urgently, they should be made without reference to the Council but the Council will be notified of the changes as soon as practicable by correspondence. In relation to amendments to the sheriff court rules and Sheriff Appeal Court rules, where amendments are

required urgently, they will be dealt with by correspondence, failing which the fast track procedure provided at 7.2 of the Council's Standing Orders should be used.

14. **The proposals in Paper 3.4 were approved.** The Council noted that a scoping exercise was in hand, and confirmed that Council members would wish to see the report on that exercise in due course.

Item 4: Justice system reform: Courts Reform

Item 4.1 – Rules Rewrite: update (Paper 4.1)

15. Katherine Marshall provided an update on the work of the Rules Rewrite Drafting Team. Working groups in relation to workstreams 1, 2, 3 and 4 were now established and there were regular meetings of these working groups. The Access to Justice Committee had recently approved proposals to establish a working group comprised of members of the Committee to take forward work stream 5, Access to Justice. The Council would be invited to consider these proposals by correspondence in due course.

16. Work was ongoing in relation to the review of the Sheriff Appeal Court Rules and the planned review of the Simple Procedure Rules. The Council would be invited to consider a methodology for the review of the Simple Procedure Rules in due course.

17. **The contents of the Rules Rewrite Tracker at Paper 4.1 were noted.**

Item 4.2 – Core Simple Procedure Rules (Papers 4.2 and 4.2A)

18. **Papers 4.2 and 4.2A**, which invited the Council to consider and, if content, approve draft rules making amendments to the core Simple Procedure Rules, were considered.

19. An earlier version of the draft rules at **Paper 4.2A** had been considered by the Council at its last meeting on 20 November 2017. At this meeting the Council raised two points for further consideration by the Rules Rewrite Drafting Team (RRDT) and the Secretariat. The first point was whether it is appropriate to make provision for recall in cases where the sheriff has decided a case in open court with both parties present. The second point was whether an objection period ought to be retained for an Application to Recall, which would enable a sheriff to consider the application on the papers rather than requiring a discussion in court in every case.

20. These points had since been considered by the RRDT and the Secretariat. The Council was invited to reconsider in what circumstances an Application to Recall

should be competent in relation to decree having been granted following the failure of a party to comply with an order of the sheriff.

21. **The Council discussed the draft rules at Paper 4.2A and it was agreed that the RRDT and two of the judicial members of the Council would consider the draft rules further and present an amended draft to Council for consideration at a future meeting.**

Item 5: A.O.C.B.

Agreement of private papers

22. The Council agreed to publish **Paper 2.3**.

Item 6: Dates of future meetings

23. Members noted the dates of future meetings:

- Monday 19 March 2018 at 10:00 am
- Monday 14 May 2018 at 10:00am
- Monday 9 July 2018 at 10:00 am
- Monday 10 September 2018 at 10:00 am
- Monday 19 November 2018 at 10:00 am

**Scottish Civil Justice Council Secretariat
January 2018**