

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 28 SEPTEMBER 2015

Members present: Lord Justice Clerk (Chairman)
Lord Menzies
Lord Tyre
Sheriff Principal Abercrombie QC
Sheriff Hughes
Eric McQueen (Chief Executive, SCTS)
Colin Lancaster (Chief Executive, SLAB)
Andrew Stewart QC (Advocate)
Paul Reid (Solicitor)
Prof. Fran Wasoff (LP member)
Lauren Bruce (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Eric Baijal (Solicitor)
Jacqueline Harris (Solicitor)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)
Kay McCorquodale (Scottish Ministers' representative)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)

Secretariat: Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)
John Thomson (Deputy Legal Secretary, Lord President's Private Office)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Susan Brodie (Policy Officer, Scottish Civil Justice Council)

Apologies: Kenneth Forrest (Advocate)
Ian Maxwell (Consumer representative)
Jane MacDonald (SCTS Policy and Legislation Branch)

Item 1: Introduction, welcome and apologies

1. The Chairman welcomed those present and noted apologies from Kenneth Forrest, Ian Maxwell and Jane MacDonald.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.1, 3.2, 3.3, 3.3A, 3.3B, 4.3, 5.1, 5.2, 5.2A, 5.3, 5.3A, 6.1, 6.1A, 7.1. 7.1A and 7.1B.

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 that had been made on actions since the last meeting.**

Item 2.3 – Items considered by correspondence [Paper 2.3]

5. **Members noted Paper 2.3** which provided a summary of the outcome of consideration given to the following matters raised by correspondence since the last meeting:
 - A. Following the last meeting, a draft instrument in relation to the appointment of child welfare reporters was circulated by correspondence and approved by members. The rules were made on 26 August, laid on 28 August and implementation of these rules, come into force on 26 October 2015.
 - B. At the last meeting, members were advised that a corrective instrument arising from the implementation of the Courts Reform (Scotland) Act 2014 proposing a number of amendments to previous instruments was

being prepared. The corrective instrument was circulated and approved by members. The instrument was made on 31 July and laid on 3 August and came into force on 21 September 2015.

Item 3: Proceedings

Item 3.1 – Council membership arrangements [Paper 3.1]

6. Members were asked to consider arrangements for Council membership following expiry of initial tenure periods for inaugural members and non-standing appointments, with a view to ensuring continuity within the Council. **The SCJC Secretariat will write to those members whose tenure periods are due to end in May 2016, in due course, to confirm member's intentions. Further consideration will be given regarding membership renewals, on appointment of the new Lord President.**
7. **Following Lord Jones' appointment as Commercial Judge and Lord Armstrong's appointment as Personal Injury Judge from 22 September, members noted that Lord Armstrong has now been appointed as Chair of the Personal Injury Committee.**
8. **Members of the Council thanked Lord Jones for his effective Chairmanship of the Personal Injury Committee and in particular, in progressing rules in relation to the implementation of the all-Scotland Personal Injury Court.**
9. Members were also invited to approve the appointment of Fiona Jones to the Family Law Committee. **Members approved this appointment.**

Item 3.2 – Standing Orders [Papers 3.2 & 3.2A]

10. Members were invited to adopt the proposed amendments to the Standing Orders and to consider whether the provisions in relation to confidentiality required further amendment.

11. **Members agreed the proposed amendments. Members agreed that no further amendment was necessary in order to make provision for members to consult with their professional bodies where this is felt to be necessary. However, it was emphasised that this should not restrict or be seen as a substitute for the arrangements currently in place for informal consultation between the Council's secretariat and those bodies.**

Item 3.3 – Updated expenses scheme [Papers 3.3, 3.3A & 3.3B]

12. Members were invited to note the updated SCJC expenses scheme and consider whether it should be circulated to the SCJC Committee. **Members noted the update and agreed that it should be circulated to all members of the SCJC Committees.**

Item 4: Work programme

Item 4.1 – Update from Scottish Government on legislative developments [Oral]

13. Kay McCorquodale provided members with an update on progress in relation to implementation of the Courts Reform (Scotland) Act 2014. She advised members that the Inquiry into Fatal Accidents and Sudden Deaths etc Scotland Bill is due to complete Stage 2 in November; the Air Weapons and Licensing (Scotland) Act 2015 received Royal Assent on 04 August; the Criminal Justice (Scotland) Bill is due to complete Stage 2 by 09 October; the Human Trafficking and Exploitation (Scotland) Bill is due to complete stage 3 by the beginning of October and the Succession (Scotland) Bill is due to complete Stage 1 by 27 November.

14. Kay provided members with an update about a number of consultations in relation to implementation of the Tribunals (Scotland) Act 2014. Kay noted that the consultation, on the removal of the 3 year limitation period from civil actions for damages for personal injury for in care survivors of historical child abuse, closed on 18 September and that consultation on a Review of Civil Partnership was published on 22 September and is due to close on 15 December.

Item 4.2 – Update from SCTS on Making Justice Work Programme of Reform and Shaping Scotland’s Courts [Oral]

15. Craig McCorkindale provided members with an update of the Making Justice Work Programme, advising that work has focused on the new Personal Injury Court and Sheriff Appeal Court (criminal) which were both established on 22 September 2015. He advised that work was ongoing in relation to the new simple procedure and the Sheriff Appeal Court (civil), which are tabled separately for discussion.

16. Craig provided an update of the progress of the new SCTS case management system, advising that a prototype has now been developed and is being shared with stakeholders.

Item 4.3 – Business Tracker [Paper 4.3]

17. Members noted the progress of work as outlined on the Business Tracker.

Item 4.4 – Winter Tours

18. Venues and dates for the winter tour are agreed as follows:

<i>Dates</i>	<i>Venues</i>
05/11/15	Kilmarnock Sheriff Court
12/11/15	Dumfries Sheriff Court
18/11/15	Aberdeen Sheriff Court
19/11/15	Inverness Sheriff Court
26/11/15	Glasgow Sheriff Court
03/12/15	Perth Sheriff Court
10/12/15	Selkirk Sheriff Court

19. **Mandy Williams** advised members that these tours were originally intended to gain feedback on the new rules which came into force on 22 September 2015. However, given that it will be too early by these dates to assess the impact on the

sheriff court, it is now intended to focus on raising the awareness of the Council and its work, summarising the current reforms and future work of the Council whilst still including a feedback component.

20. Members specified the information of the Winter Tours should be publicised as soon as possible and were satisfied with the proposed content of the tours.

Item 4.5 – Strategy meeting

21. At the Council meeting of 6 July 2015, members agreed that a strategy meeting to discuss work priorities would be useful. **Members agreed that this meeting should take place once the new Lord President has been appointed.**

Item 5: Rules Rewrite

Item 5.1 – Update from Rules Rewrite Drafting Team [Paper 5.1]

22. Members noted the update provided on the activity tracker Paper 5.1.

Item 5.2 – Sheriff Appeal Court (civil) [Papers 5.2 and 5.2A]

23. Members considered the papers provided in relation to the new Sheriff Appeal Court. Sheriff Principal Abercrombie noted particular thanks to the Rules Rewrite Drafting Team for their work in revising the draft rules in light of comments received.

24. After discussion, **members indicated they were content with the draft rules and agreed that final draft rules be considered by way of correspondence.**

25. Members agreed that it would be worthwhile to review the rules in light of practice once the new court has been established. **It was agreed to revisit the rules in approximately 18 months' time to review whether changes were needed in light of emerging practice.**

Item 5.3 – Simple Procedure [Papers 5.3 & 5.3A]

26. Members noted the progress of work on the rules for the new simple procedure.

Item 6: Research and consultations

Item 6.1 – Protective Expenses Orders [Papers 6.1, 6.1A & 6.1B]

- 27. John Thomson** spoke to these papers. Members were asked to consider the recommendations and offer any views held on the amendments to Chapter 58A of the Rules of the Court of Session proposed by the Scottish Government.
- 28.** The proposals put forward by the Scottish Government involve (a) extending the scope of Chapter 58A so as to make it possible to apply for a Protective Expenses Order (PEO) in judicial reviews and statutory appeals engaging Article 9(1) and 9(3) of the Aarhus Convention as well as Article 9(2), and (b) modifying the categories of person eligible to apply for such orders, and the conditions regarding standing, in line with the Convention.
- 29. Members were content with the proposed recommendations and amendments suggested by the Scottish Government and agreed a draft instrument to be prepared for the following SCJC meeting in November 2015.**
- 30. Members agreed that a small working group be established with a remit to consider whether the prescribed test and procedure requires to be revised in order to achieve compatibility with the Convention and EU law, and, if necessary, formulate proposals for changes to the rules.**

Item 7: Secondary Legislation

Item 7.1 – Child Support Fee Regulations [Papers 7.1, 7.1A & 7.1B]

- 31. Members considered the draft rules and were content that these be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

Item 8: A.O.C.B

32. Employment Judge d'Inverno commented that the drafting approach adopted for the new Simple Procedure rules was commendable.

Item 9: Dates of Next Meetings

Members noted the dates of the next meetings:

- 10.00am, Monday 16 November, 2015
- 10.00am, Monday 25th January 2016
- 10.00am, Monday 14th March 2016
- 10.00am, Monday 16th May 2016
- 10.00am, Monday 11th July 2016
- 10.00am, Monday 3rd October 2016
- 10.00am, Monday 21st November 2016

Scottish Civil Justice Council Secretariat

September 2015