

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
RULES REWRITE COMMITTEE
TUESDAY 31 MAY 2016 AT 4.15 PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Lord Menzies (Acting Chairman, SCJC member)

Ian Dickson (SLAB representative)

Cameron Stewart (Scottish Ministers' representative)

Jonathan Brown (Office of Scottish Parliamentary Counsel,
Scottish Government)

Lady Wolffe

Sheriff Principal Scott

Sheriff Thornton

Kenneth Forrest (Advocate, SCJC member)

Jacqueline Harris (Solicitor, SCJC member)

In attendance: Jane MacDonald (SCTS Policy and Legislation Branch)

Gillian Prentice (Deputy Principal Clerk of Session)

Support: Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)

Luke McBratney (Deputy Legal Secretary, Rules Rewrite
Drafting Team)

Stephen Feltham (Deputy Legal Secretary, Rules Rewrite
Drafting Team)

Inez Manson (Deputy Legal Secretary, Lord President's Private
Office)

Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)

Apologies: Lord President

Kay McCorquodale (Scottish Government representative)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from the Lord President and Kay McCorquodale. The Chairman expressed thanks on behalf of the Committee to Professor Wasoff for her contributions to the work of the Committee. The Chairman extended congratulations on behalf of the Committee to Andrew Stewart on his judicial appointment and expressed thanks for his contributions to the work of the Committee.

2. **The Committee agreed not to publish the following papers: 2.2, 4.2, 5.1, 5.1A, 5.2, 5.2A, 5.3, 5.3A, 6.1, 6.1A, 6.2 & 6.2A, 6.2B, 6.2C. 7.1, 7.1A, 7.1B**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **The Committee approved the minutes from the previous meeting subject to some minor amendments.**

Item 2.2 – Progress of Actions from previous meeting (Paper 2.2)

4. **The Committee noted the progress that had been made on actions since the last meeting.**

Item 3: Proceedings

Item 3.1 – Membership (Paper 3.1)

5. **The Committee noted the Council appointments which took place on 28 May 2016.**

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

6. Cameron Stewart provided members with an update on legislative developments in the Scottish Government. In particular, work is continuing with implementation of the Courts Reform (Scotland) Act 2014, the Succession (Scotland) Act 2016 and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

7. Looking forward, there are a number of commitments in the new government manifesto in the area of civil law which are expected to require legislation in the new Parliamentary term. These include reform of gender recognition law, review of regulation of the legal profession, reform of succession law, removal of the time bar for survivors of historical child abuse, implementation of Sheriff Principal Taylor's review of the costs and funding of civil litigation, reform of legal aid and a review of aspects of family law.

Item 4.2 RRC Work Tracker (Paper 4.2)

8. **The Committee noted the paper.**

Item 5: Justice System Reform: Rules Rewrite Project Discussion Papers

Item 5.1 - RRP Discussion Paper 1: A statement of principle for civil procedure (Papers 5.1, 5.1A)

9. The remit of the Rules Rewrite Committee, as agreed by the Scottish Civil Justice Council, includes development of "a statement of principle and purpose in the rules of the sheriff court and the Court of Session". At its 29th March 2016 meeting, the Committee asked for early consideration of a paper on the proposal to include a statement of principle/overriding objective in the rules of court.

10. Stephen Feltham provided an overview of the purpose and content of the discussion paper and advised the Committee about the Council's views on the matters under consideration. The discussion paper made recommendations as to:

- the nature and content of the statement of principle/overriding objective,
- how the statement of principle/overriding objective might be expressed in the rules, and
- the relationship between the statement/objective and the other aspects of the rules (in other words, how the court is to apply the rules in order to give effect to the statement of principle/overriding objective).

11. **The Committee considered discussion paper 5.1A along with the Council's views. It agreed that a summary of its recommendations will be prepared by the drafting team.**

12. **The Committee considered it would be useful for the drafter to contact the relevant body in England and Wales to determine how similar issues are approached in that jurisdiction.**

Item 5.2 - RRP Discussion Paper 2: A model for case management (Paper 5.2, 5.2A and Annexes 5.2A - D)

13. Kenny Htet-Khin provided an overview of the purpose and content of the discussion paper (Paper 5.2A and Annexes) and summarised related issues emanating from the Civil Courts review. It was noted that the paper does not deal with case management powers and is restricted to considering a model for case management. It was noted that the actual powers will be dependent on the overall statement of principle agreed by the Council and so a separate paper will be prepared to consider specific powers in due course.

14. The discussion paper made recommendations as to:

- whether all cases should be case managed and, if so, the stage in proceedings in which the Court should seek to case manage,
- the use of case-flow procedures and active judicial management of cases, and consider suitable categories of case for each procedure,
- any benefits to case management deriving from judicial continuity.

15. **The Committee considered discussion paper 5.2A and noted the general recommendations of the SCCR and the wide powers afforded to the Court of Session relating to case management. The Committee agreed that a summary of its recommendations will be prepared by the drafting team.**

Item 5.3 - RRP Discussion Paper 3: The form, style and language of court rules(Paper 5.3, 5.3A)

16. Luke McBratney provided an overview of the purpose and content of the discussion paper.

17. **The Committee agreed that a summary of its recommendations will be prepared by the drafting team.**

18. The Committee noted that the Court of Session Commercial Court judges have offered to provide copies of responses to a recent consultation which was undertaken.

19. **The Committee considered this information would be helpful and asked the Secretariat to obtain this for consideration by members at the next meeting.**

20. The Court of Session Commercial Court judges had also offered members the opportunity to sit in at a case management hearing. Members who wish to attend a case management hearing in the Court of Session on week beginning 4 July to observe proceedings were asked to email Karen Stewart in order to make arrangements.

Item 6: Proposals for rules

Item 6.1 - Procedure required to claim expenses from the Scottish Legal Aid Fund (Papers 6.1, 6.1A)

21. The Committee considered **Paper 6.1A** and the related draft instrument at **Annex A** of the paper along with additional policy proposals for amendments to rules of court received from the Scottish Legal Aid Board (SLAB). The SLAB proposals seek further modification of the application procedure for motions seeking an award of expenses from the legal aid fund.

22. The Committee agreed that it would be inappropriate to approve the draft instrument at this time and that the SLAB policy proposals seeking modification of the application procedure require to be considered. The Committee remitted the matter to the Costs and Funding Committee to take forward.

Item 6.2 - Bankruptcy (Scotland) Bill (Papers 6.2, 6.2A-C)

23. Kenny Htet-Khin provided an overview of the draft instrument required as a result of the Bankruptcy and Diligence Act 2016. He explained that the drafter has attempted to put the rules in a more structured format.

24. The Committee considered the papers, the draft instrument, and a number of questions arising.

25. Sheriff Thornton requested that the remaining questions of policy set out in the papers, be continued for consideration at the next meeting.

26. In order to ensure there is no slippage in the timetable for implementation, members agreed to provide the Secretariat with any substantive responses to the questions raised in the papers within 14 days of today's meeting.

27. The Committee instructed the Rules Rewrite Drafting team to prepare a revised draft instrument, taking account of any responses received, for consideration by the Committee at the next meeting.

Item 7: AOCB

Item 7.1 - Committee remits – (Papers 7.1, 7.1A, 7.1B)

28. The committee instructed the Secretariat to issue this item to members for consideration by correspondence.

Item 8: Dates of future meetings

29. Members noted the dates of future meetings:

- Tuesday 12 July at 4.15pm
- Tuesday 25 October at 4.15pm
- Tuesday 6 December at 4.15pm

Scottish Civil Justice Council Secretariat

May 2016