

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL – RULES
REWRITE WORKING GROUP**

1 MAY 2014 AT 16.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES

Members present: Lord Menzies (Chair)
Kenneth Forrest (Advocate)
Andrew Stewart QC
Duncan Murray (Solicitor)
Jonathan Brown (OSPC, Scottish Government)
Professor Fran Wasoff (LP Member)

In attendance: Roddy Flinn (Legal Secretary to the Lord President and
Secretary to the SCJC)
Kenneth Htet-Khin (head of the Rules Rewrite Drafting
Team)
Ondine Tennant (Deputy Secretary to the SCJC)
Neil Robertson (Policy Officer, SCJC)

Apologies: Lord President (Gill)
Lady Wolffe
Sheriff Principal Scott (Sheriff Principal of Glasgow and
Strathkelvin)

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers: 4.1 and 5.1**

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 – Action points from previous meeting [Oral]

4. Ondine Tennant advised that all action points from the previous meeting had either been taken forward or were tabled for discussion at the meeting. **Members noted the position.**
5. Members noted that at its meeting of 10 March 2014 the Scottish Civil Justice Council had discussed the Group's Interim Report. Subject to judicial review being added to the suites of rules that should be taken forward as a priority, the Council approved the report for publication.

Item 3: Making Justice Work / SCJC Update

Item 3 – Making Justice Work programme [Oral]

6. Roddy Flinn provided an oral update on developments under the Making Justice Work programme, outlining in particular the progress of the Courts Reform (Sc.) Bill through Parliament.
7. Kenny Htet-Khin provided an oral update on the plans for recruiting the drafting team to support the Rules Rewrite Project.

Item 3.1 Remit and Membership [Paper 3.1]

8. Members discussed **Paper 3.1** which sought views on a proposed revised remit and extension of the Group's membership. **Paper 3.1** also proposed to rename the Group as the "Rules Rewrite Committee" and that the Committee's role and remit be reviewed after a period of two years.
9. **Members noted that it would be useful to have greater clarity as to how the process for drafting new rules would work. The Group asked for an outline of the proposed process to be prepared for the next meeting.**

10. There was some discussion as to whether the Group's remit should be extended or whether alternative arrangements, such as establishing separate subject specific working groups, should be explored. It was generally thought that an extension of the membership to better reflect the Group's proposed future role would be an appropriate way forward.

11. **Thereafter, members indicated that they were broadly content with the proposals and expressed the view that the membership of the Group should be extended to include a Sheriff and representatives from the Scottish Court Service and Scottish Government.**

Item 4: Rules Rewrite Project

Item 4.1 Style Guide [Papers 4.1]

12. The Group considered **Paper 4.1**, which asked members to consider options for the style guide for the drafting of new rules under the Rules Rewrite Project.

13. Members gave their views on the content of the style guide and on the suggested proposals contained therein. The following points were raised in discussion.
 - A generic structure might not be appropriate for all sets of rules but there was a preference for rules being laid out in a chronological sequence, guiding users through a specified order of events.
 - Alternatives to mixed numbering and lettering in the rules should be considered.
 - Rules should be prefaced with a table of contents.
 - It was generally thought that as Latin appears rarely in rules it should not be introduced except where there is no suitable translation or other good reason for doing so. If Latin is necessary, it might be helpful to provide a definition within, or alongside, the rules.
 - Latin should not appear in the simple procedure rules.
 - Ambiguous language should be clarified as the rules are rewritten but that (with the exception of the simple procedure) the retention of out of date or

complex language in an existing rule should be retained where judicial authority has brought a benefit and only where necessary

- It was not thought necessary to introduce a test in respect of the simplification of procedures, rather that this should be considered on a case by case basis.
- Rules should be drafted with the distinct nature of the Scottish system in mind.
- Links to forms should be included in the rules. Further thought was to be given to numbering of forms. Although it could be helpful for form numbering to correspond with rule numbering this might not be appropriate where one form is used in respect of more than one rule.
- It was felt that Practice Directions could be helpful in terms of providing context and signalling a change in practice but that all essential information should be included in rules so that it is available in a single place. Whether the SCJC should have a role in preparing such directions required consideration.
- Rules should facilitate the use of IT wherever possible and it was noted that the ICT Committee had given consideration to this matter and would report to the RRWG in due course.

14. A draft style guide, incorporating members' comments, was to be prepared for the next meeting.

Agenda Item 5: Civil Justice Council '*Justice After Jackson*' Conference [Paper 5]

15. Duncan Murray introduced a short report on SCJC delegates' observations following the Civil Justice Council's conference on the 'Jackson' reforms one year on. Key points highlighted included that: judicial training was critical, practitioners needed to be sighted on upcoming changes, the *Mitchell* decision had brought about significant changes in behaviour (including increased number of applications for strike out over minor breaches) and running two systems in parallel during the transitional period could be problematic. **Members noted the terms of the report.**

Agenda Item 6: A.O.C.B

16. No other business was raised.

Agenda Item 7: Date of Next Meeting

17. The meeting was fixed for 29 May 2014 at 4.15 pm.

Scottish Civil Justice Council Secretariat

May 2014