

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

18 SEPTEMBER 2013 AT 16.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES

Members present: Lord Menzies (Deputy Chair)
Sheriff Principal Scott (Sheriff Principal of Glasgow and Strathkelvin)
Kenneth Forrest (Advocate)
Duncan Murray (Solicitor)
Jonathan Brown (OSPC, Scottish Government)
Sarah Wolffe QC (Advocate, Papers member)

In attendance: Roddy Flinn (Legal Secretary to the Lord President and Secretary to the SCJC)
Ondine Tennant (Deputy Secretary to the SCJC)
Julius Komorowski (Law Clerk to the Lord President)

Apologies: Lord President (Gill)

Item 1: Introduction, welcome, private papers and apologies

1. The Lord President having tendered his apologies, Lord Menzies chaired the meeting.
2. The Chair welcomed all those present and members introduced themselves.
3. It was agreed not to publish the following papers: 3.1, 3.2, 3.2A and 3.2B. Papers 4.1 and 4.1A would be published following the SCJC's consideration of the matters contained therein.

Item 2: Proceedings

Item 2.1 - Standing Orders [Papers 2.1 and 2.2A]

4. Members noted the terms of the Standing Orders which had been adopted by the SCJC at its meeting of 10 June and further that the Secretariat had submitted recommendations to the SCJC in respect of further provision for

committee proceedings, the treatment of private papers and in respect of Freedom of Information.

Item 2.2 - Remit and Membership [Papers 2.2 and 2.2A]

5. Members noted the remit and membership of the Group.

Item 2.3 - Freedom of Information (Scotland) Act 2002 [Papers 2.3 and 2.3A]

6. Members were advised that the SCJC and its committees are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and of the Publication Scheme and Guide to Information that had been adopted by the SCJC. Members noted the terms of the Publication Scheme and Guide to Information and that it commits the SCJC and its committees to publishing agendas, minutes and other selected papers on the SCJC website. The intention of the Secretariat to prepare guidance for Council and committee members in respect of FOISA was also noted.

Item 2.4 - Making Justice Work Programme/ SCJC forward work programme

7. Ondine Tennant gave an oral update on SCJC activity and an overview of the Scottish Government's *Making Justice Work* (MJW) programme. The Group noted the establishment of various committees on a thematic basis and that the work of committees would need to be monitored with a view to identifying and managing any potential overlap.
8. It was noted that the recommendations of the RRWG will have a major influence on the future business of the SCJC, particularly in relation to the phasing of the new rules. **The Group instructed the Secretariat to explore the possibility of receiving regular updates on the MJW programme.**

Item 3: Rules Rewrite Project

Item 3.1 – The Rules Rewrite Project [Papers 3.1 and 3.1A]

9. Roddy Flinn spoke to Papers 3.1 and 3.1A , advising members of the Rules Rewrite Project which has been initiated under the auspices of the Scottish Government's MJW Programme and through which the rules changes to implement civil courts reform will be carried out. Particular reference was made to the plans to recruit a team of drafting lawyers and the expected timescales for implementation.

10. There was some discussion of the process for instructing legislative changes and how this might be taken forward under the new arrangements. It was considered that the style guide to be developed would assist with ensuring the consistency and quality of the rules to be prepared under the various SCJC committees. **It was thought that the group should give consideration, in general terms, to the question of consultation, given the implications that that may have on implementation timescales.**
11. It was noted that civil courts reform was based on taking a “different philosophical approach” to the operation of the civil courts and that the Rules Rewrite Project should support that. There was general consensus that the primary matter for the RRWG’s consideration at this stage was the identification of priority areas for rules revisions and the extent to which certain aspects of rules might require revision. The Group noted that the Secretariat would prepare detailed advice as to which aspects of the draft Courts Reform (Sc) Bill will necessitate changes to court rules to assist it with its consideration of the prioritisation of the phased rules changes. **It was considered that a greater understanding of the priority areas for implementation of the Courts Reform (Scotland) Bill was necessary. The Secretariat was asked to hold further discussions with SCS and the Scottish Government in this regard.**
12. Members noted the terms of the Rules Rewrite Project Initiation Document (Paper 3.1A) and the interdependency of the Rules Rewrite Project with other projects being taken forward under the MJW programme. It was further noted that the RRWG has been asked to report in spring 2014, with an interim report to be provided for the SCJC meeting on 10 March 2014.

Item 3.2 – Research into rules rewrite methodology [Papers 3.2, 3.2A and 3.2B]

13. Julius Komorowski spoke to papers under item 3.2, giving members an overview of the findings of his initial research into the different approaches to rules revision projects which have been taken by jurisdictions similar to Scotland.
14. Relevant examples were to be found in the experiences of England and Wales, Alberta, Victoria, Hong Kong, and the Scottish Land Court. Particular focus was given to the fundamental question of whether uniform or separate rules should be adopted and the problems that had been encountered. The research itself did not offer any conclusions on this point but noted the very significant expense and time that a fundamental revision would require. **The group agreed that it would be beneficial to learn more about Lord Justice Underhill’s Review of Employment Tribunal Rules and the experience in**

England and Wales and instructed the Secretariat to make arrangements for face-to-face discussions in these respects.

15. Some questions were raised as to what implications a fundamental rewrite and the use of new language might have on the body of case law interpreting existing provisions. It was considered that legal certainty should be a primary consideration in drafting and this would be an important issue for the drafters of court rules.
16. The group briefly considered the 'style' of the new rules and the process for drafting these. It was generally considered that priority should be given to developing the methodology of the Rules Rewrite Project in order to provide an interim report to the SCJC in March 2014.
17. The group also reflected on the aims of the Rules Rewrite Project (harmonisation, consolidation and simplification) and the overriding objective of the new rules. The initial view was that harmonisation was, in general terms, desirable. However, it was noted that rules for summary proceedings in the sheriff court (and, in due course, simple procedure) should be drafted with the needs of party litigants in mind and should therefore retain as much simplicity and clarity as possible. Noting the resourcing implications that would be involved in a fundamental and comprehensive rewrite, the group did not consider that simplification should be pursued for its own sake. **It was agreed that these questions would require further consideration at future meetings.**

Note of thanks

18. It was agreed that the research paper that had been prepared was extremely helpful and the Group wished to record its thanks to Mr Komorowski for his efforts in this regard.

Item 4: Styles and Guidance

Item 4.1 – Guidance for policy teams [Papers 4.1 and 4.1A]

Ondine Tennant spoke to papers under item 4.1. Members were advised that guidance for officials working on policy which might give rise to the need for new rules had been prepared and submitted to the SCJC for consideration. There was discussion as to the document's purpose and intended audience. **It was considered that further discussion of the document at the SCJC meeting of Monday 23 September would be beneficial.**

Item 4.2 – Style guide for rules

19. This topic had been discussed already under agenda items 3.1 and 3.2.

Item 5: A.O.C.B.

20. No other business was raised.

Item 6: Date of next meeting

21. Subject to members' availability, it was suggested the next meetings should be held on 6 November and 11 December. The Secretariat would take forward arrangements in that regard and confirm the proposed meeting dates in due course.

**Scottish Civil Justice Council Secretariat
October 2013**