

# SCOTTISH CIVIL JUSTICE COUNCIL – RULES REWRITE COMMITTEE

20 NOVEMBER 2014 AT 4.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

## APPROVED MINUTES

**Members present:** Lord Menzies (Chair)  
Lady Wolffe – from item 3.1  
Jonathan Brown (OSPC, Scottish Government)  
Professor Fran Wasoff (LP Member) – from item 3.1  
Sheriff AGD Thornton (Sheriff of Tayside, Central & Fife)  
Andrew Stewart QC  
Kay McCorquodale (Courts Policy Team, Scottish Government)  
Kenneth Forrest (Advocate)  
Ian Dickson (SLAB)

**In attendance:** Kenneth Htet-Khin (Head of the Rules Rewrite Drafting Team)  
Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)  
Jane MacDonald (SCS Policy & Legislation Branch)  
Yvonne Anderson (Offices of Court of Session)  
Mandy Williams (Deputy Secretary to the SCJC)  
Susan Brodie (Policy Officer, SCJC)

**Apologies:** Lord President  
Roddy Flinn (Secretary to the SCJC)  
Gillian Prentice (Deputy Principal Clerk of Session)  
Sheriff Principal Scott (Sheriff Principal of Glasgow & Strathkelvin)

**Item 1: Introduction, welcome, private papers and apologies**

1. The Chair welcomed those present and in particular those attending their first meeting as members of the new Committee and noted apologies.
2. **The Committee agreed not to publish the following papers: 5.1, 5.1A, 6.1, 6.2 and 6.3.**

## **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. The Chair advised that all action points from the previous meeting had been dealt with or are included on today's agenda. It was noted that the creation of a private area for members within the SCJC website was due to be discussed by the Council at its meeting on Monday 24<sup>th</sup> November. **Members noted the position.**

## **Item 3: Proceedings**

### *Item 3.1 – RRWC membership and remit [Papers 3.1 and 3.1A-B]*

Papers 3.1A and 3.1B informed members of the Committee's remit and membership. The Chair advised there was currently a vacancy within the Committee membership however this would be addressed at the forthcoming SCJC meeting. The Chair confirmed that the Committee's remit includes responsibility for general care and maintenance of the rules. **The Committee noted the update and noted the importance of all the Committees communicating with each other, given the overlap in responsibilities for some strands of work.**

## **Item 4: Making Justice Work/SCJC Update**

### *Item 4 – Making Justice Work programme [Oral]*

5. Kenny Htet-Khin provided an oral update on developments under the Making Justice Work programme, outlining in particular the progress of the Courts Reform (Scotland) Act 2014 which received Royal Assent on 10 November 2014. One major change during the Parliamentary process was a non-Government Stage 2 amendment to provide that there should be no simple procedure in the personal injury court. The implications for this are currently being considered by the Personal Injury Committee.
6. The next stage for the Act is implementation and the Project Board is due to meet at the end of November 2014 to consider the operational implications arising from the Act.

## **Item 5: Rules Rewrite Project**

### *Item 5.1 – Rules Rewrite Project: Final Report [Papers 5.1 & 5.1A]*

7. Kenny Htet-Khin spoke to the process for the instruction of new rules and guidance on the form and structure of new rules. Members discussed the publication of the style guide and agreed that this should not be published as part of the report.
8. The Committee noted that the exclusive competence of the Sheriff Court will now be £100,000. A paper exploring whether rules of court are required in connection with the exclusive competence is due to be considered by the Costs and Funding Committee at its meeting on 4 December 2014.
9. Members discussed the Personal Injury Court and noted that intention is for draft rules to be considered by the Council in March 2015.
10. Members also noted that proposals are being put before the Access to Justice Committee (AtJC) at their next meeting on 8 December 2014 regarding the simple procedure. It is possible the AtJC may wish to consult on the simple procedure given that the process has been left mainly to the SCJC to develop. This may cause delay to the procedure being implemented.
11. **Subject to minor typographical amendment, members approved the Final Report on the Rules Rewrite Project Report and agreed that the report should be put before the SCJC at their meeting of 15 January 2015.**

## **Item 6: Proposals for rules**

### *Item 6.1 Judicial Review [Paper 6.1]*

12. Members discussed the recommendations in relation to judicial review proceedings. **It was agreed that Chapter 58 RCS should be revoked and rewritten.**
13. **Members also agreed to form a reference group consisting of Lady Wolffe, Andrew Stewart QC, Kenneth Forrest and Kay McCorquodale to develop detailed drafting instructions for the Committee's next meeting. The Committee welcomed the offer from Ian Dickson to assist in relation to legal aid matters.**

*Item 6.2 Sheriff Appeal Court [Paper 6.2]*

14. Members considered the recommendations in relation to Sheriff Appeal Court. **The Committee agreed that the rules should be broadly modelled on Chapter 40 of the Rules of the Court of Session. It also agreed that a standalone set of rules should be prepared for the Sheriff Appeal Court.**
15. **The Committee agreed that detailed policy instructions be prepared on that basis.**
16. **The Committee also endorsed the proposal that there should be a phased commencement of the Sheriff Appeal Court's functions, with the Court taking up its criminal jurisdiction first and its civil jurisdiction at a later date.**

*Item 6.3 New Judicial Offices [Paper 6.3]*

17. **The Committee agreed that at this stage it appeared no rules of court are required to support the introduction of summary sheriffs or Appeal Sheriffs. It agreed to maintain a watching brief on this area.**

**Agenda Item 7: A.O.C.B**

18. No other business was raised.

**Agenda Item 8: Date of Next Meetings**

19. The next meetings were agreed as follows:
  - **Tuesday 10 February 2015 at 4.15pm**
  - **Tuesday 7 April 2015 at 4.15pm (provisional)**

- **Tuesday 26 May 2015 at 4.15pm**

**Scottish Civil Justice Council Secretariat  
November 2014**