

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

7 NOVEMBER 2013 AT 16.15 PM

JURY ROOM A, PARLIAMENT HOUSE

MINUTES

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

In attendance: Roddy Flinn (Legal Secretary to the Lord President and Secretary to the SCJC)
Ondine Tennant (Deputy Secretary to the SCJC)
Neil Robertson (Policy Officer, SCJC)

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and introduced Neil Robertson, Policy Officer for the Scottish Civil Justice Council.
2. **The Committee agreed not to publish the following papers: 4.2 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 gave an oral update on the progress of action points from the previous meeting as follows.

Action Point 1: The Secretariat were to explore the possibility of receiving regular updates on the MJW programme.

- 4.1. Roddy Flinn attends the MJW Project 1 Board and will provide updates to the RRWG under a standing item on the agenda.

Action Point 2: The Group was to give consideration, in general terms, to the question of consultation, given the implications that that may have on implementation timescales.

- 4.2. This was tabled for discussion under Agenda item 5.

Action Point 3: 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.

- 4.3. This was tabled for discussion under Agenda item 5.

Action Point 4: 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.

- 4.4. Neil Robertson advised that a date of 3 December had been arranged for the visit and that members would have the opportunity to meet both Lord Justice Underhill and Lord Justice Richards on that date. **It was agreed to also approach Hazel Genn and Michael Zander in this regard and the Secretariat was asked to take forward the necessary arrangements. Members were asked to give consideration to topics which might usefully be covered during these discussions.**

Action Point 5: It was agreed that the questions surrounding the overarching aims of the Rules Rewrite project (harmonisation, consolidation and simplification) would require further consideration at future meetings.

- 4.5. **It was agreed the matter would be explored further during the lessons learned visit to England and Wales and tabled for discussion at the Group's December meeting.**

Action Point 6: Further discussion at the SCJC meeting of Monday 23 September around the Policy Team Guidance for requesting court rules was thought to be beneficial.

4.6. The paper was considered at the SCJC meeting of 23 September and the Criminal Courts Rules Council of 20 October and had been revised slightly in light of discussions at those meetings. It had been made available online and would be circulated to SG and UK Government officials.

5. Members noted the progress since the last meeting.

Item 3: Proceedings

Item 3.1 – Standing Orders [Papers 3.1 and 3.1A]

6. Paper 3.1 updated members as to revisions to the SCJC Standing Orders (Paper 3.1A), adopted by the SCJC at its meeting on 23 September.

7. Members noted the amendments to the Standing Orders.

Item 4: Making Justice Work / SCJC Update

Item 4.1 – Making Justice Work programme [Oral]

8. Roddy Flinn provided an oral update on developments under the Making Justice Work Programme, outlining in particular the anticipated timescales for parliamentary consideration of the forthcoming Courts Reform (Sc) Bill. It was agreed that he would continue to update the Group as to developments on the Bill, following further engagement with the Scottish Government in this regard.

Item 4.2 – SCJC Annual Programme [Paper 4.2]

9. Ondine Tennant spoke to this paper and advised that the SCJC Annual Programme is due to be published on 8 November 2013. **Members noted the following:**

- **committees have now been established to consider personal injury, ICT, family law and access to justice;**
- **a costs and funding committee is in the process of being established to consider, among other things, the implications of Sheriff Principal Taylor’s Report;**
- **that the work of the RRWG will inform the work plans of the other SCJC committees; and**

- that the SCJC has agreed to give specific consideration as to how it will give regard to its guiding principles during the course of this year. This was thought to be of particular relevance to the RRWG's work.

Item 5: Rules Rewrite Project

Item 5.1 Courts Reform (Sc) Bill implementation [Papers 5.1, 5.1A and 5.1B]

10. Ondine Tennant spoke to papers under agenda item 5, outlining the key proposals contained in the draft Courts Reform (Sc) Bill 2013 and the Scottish Civil Courts Review (SCCR) recommendations. Members were advised that following initial discussions with SCS and SG colleagues, the priority areas identified for early implementation of the Bill are:

- the increase to the privative limit,
- the introduction of summary sheriffs and a new simple procedure,
- the creation of a Sheriff Appeal Court and the introduction of Appeal Sheriffs, and
- the creation of a specialist personal injury court with civil jury trials.

11. Members noted the phased approach being taken to implementation of civil courts reform and supported early implementation of the priority areas which had been identified.

12. There was some discussion of the rules which might be required to support increased case management. It was felt that special arrangements (e.g. case-flow management) would be required for certain particular types of case.

13. Members noted the summary of the key proposals contained in the draft Courts Reform (Sc) Bill 2013, the key SCCR recommendations with implications for court rules. **The Secretariat was instructed to hold further discussions with SG and SCS colleagues and revert to the Working Group with high-level options on the possible timetables for the rules project at its December meeting.**

Agenda Item 6: Style Guide and Practice Notes and Directions [Oral]

14. The Group discussed the development of a "style guide" for the new rules. The Group formed a preliminary view that any style guide should cover the overriding objective of the rules, the extent to which the aims of

harmonisation, consolidation and simplification should be pursued, the style of English and the style of drafting to be used.

15. It was agreed that a simplified drafting style should be adopted, but that further consideration would need to be given to the extent of any simplification, for example with regard to the vocabulary of the rules. There was consensus in principle against adopting a unitary set of rules, with the Group noting that the simple procedure in particular should be of a special nature.
16. **Members agreed to give further consideration to the style guide following the visit to England and Wales.**
17. The Group also discussed the role of Practice Notes and Directions. It was considered that Practice Notes and Directions have an important role in successfully implementing rules changes. However, it was felt that there was potential for inconsistencies in approach across the Sherifffdoms and that thought should be given to practice directions within the context of the overall style for rules.

Agenda Item 7: A.O.C.B

18. No other item was raised.

Agenda Item 8: Dates of Next Meetings

19. The Secretariat was to explore the possibility of rescheduling the meeting arranged for 11 December. It was agreed that further meetings should be held on 16 January and in February. The Secretariat was asked to take forward arrangements in that regard and confirm the proposed meeting dates in due course.

**Scottish Civil Justice Council Secretariat
November 2013**