

## THE SCOTTISH CIVIL JUSTICE COUNCIL RULES REWRITE COMMITTEE

### 30 August 2016 – Note of decisions on the meeting papers dated 12/7/16, considered of new via correspondence

**Responses:** Lord Menzies (Acting Chairman, SCJC member)  
Kenneth Forrest (Advocate, SCJC member)  
Ian Dickson (SLAB representative)  
Kay McCorquodale (Scottish Government representative)  
Cameron Stewart (Scottish Government representative)  
Joel Conn (Solicitor, SCJC member)  
Sheriff Principal Scott  
Sheriff Thornton  
Jonathan Brown (Office of Scottish Parliamentary Counsel,  
Scottish Government)  
Lady Wolffe

1. On 12 July 2016, the scheduled Rules Rewrite Committee meeting proceeded and papers were discussed by those present. Subsequently, the secretariat noted that due to a number of apologies, the meeting had not been quorate under the Scottish Civil Justice Council Standing orders.
2. Standing Order 4.12 provides *“The quorum of a committee meeting is one in excess of half the membership, and this must include, subject to rule 4.11, the Chair. However, when not quorate the members present may decide to proceed with a meeting at which items on the agenda are considered and any recommendations reached are put to the next committee meeting for decision if time allows or otherwise are put to the SCJC for decision, with a clear statement that the meeting had not been quorate”*. On this occasion, six out of eleven committee members were present.
3. The practical effect of the situation is that the decisions taken by those members present at the meeting have no standing. The minute is treated as *‘pro non scripto’*.
4. On 16 August 2016, meeting papers for the scheduled meeting on 12 July 2016 were issued the Rules Rewrite Committee to consider, of new. Responses were sought by 30 August 2016.
5. 10 responses were received on these papers. A list of those responding is provided above. Of the 10 responses, 2 were alternate representatives from Scottish Government so only 1 response is counted in so far as establishing a quorum. In relation to the requirements of the standing orders, the decisions on

the papers made by respondents, represents a quorum of the Committee membership. A note of those decisions is provided below.

### Note of Decisions on papers

#### **Item 1: Welcome, apologies and agreement of private papers**

6. **The Committee agreed not to publish the following papers: 2.2, 4.1, 4.1A, 4.2, 4.2A, 5.1, 5.2, 5.2A, 5.2B**

#### **Item 2: Previous meeting**

##### *Item 2.1 – Minutes of previous meeting (Paper 2.1)*

7. **The Committee approved the minutes from the previous meeting.** There were no matters arising.

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

8. **The Committee noted Paper 2.2 which updates the progress made on actions since the last meeting.**

##### *Item 2.3 – Items by correspondence*

9. The Committee noted that on 11 July 2016, the Council agreed the revised committee remit submitted to them for approval. The Secretariat will update the Council website in this regard.

#### **Item 3: Work Programme**

##### *Item 3.1- Update from the Scottish Government on legislative developments*

10. The Committee noted that the Scottish Parliament is currently in recess and that the Scottish Government is expected to set out its Programme for Government with the associated legislative programme when the parliament returns in September.

##### *Item 3.2 - Rules Rewrite Committee Business Update*

11. The Committee noted that the rules rewrite drafting team continues with ongoing work preparing discussion papers under the Rules Rewrite Project Plan and the drafting of new inquiry procedure rules for fatal accidents.

#### **Item 4: Justice System Reform: Rules Rewrite Project Plan**

##### *Item 4.1 – RRP Discussion Paper 4: Otiose provisions (Paper 4.1, Paper 4.1A)*

12. The Committee considered these papers which set out the proposed approach to preparation of the next Rules Rewrite Project discussion paper on otiose provisions. The drafting team propose to consult with operational staff to obtain feedback on the use of certain court rules. Members agreed that a table of rules provisions will be disseminated to Court of Session Clerks by the Deputy Principal Clerk of Session who will co-ordinate responses. A similar exercise will be carried out across the sheriff courts, to be co-ordinated by Sherifffdom Business Managers. The Committee noted that it is anticipated that consultation with operational staff will take place over the summer and that the discussion paper will be available to the Committee for consideration in October.

**The Committee approved the proposed approach.**

##### *Item 4.2 – Rules Rewrite Project Paper (Paper 4.2, Paper 4.2A)*

13. The Committee considered the Rules Rewrite Project Paper (**Paper 4.2A**) which summarises the policy decisions and recommendations taken to date, under Phase 1 of the Rules Rewrite Project Plan.

**14. The Committee approved the project paper.**

#### **Item 5: Proposals for rules**

##### *Item 5.1 - Courts Reform (Scotland) Act 2014 – Section 115 – Reform of the permission to appeal procedure (Paper 5.1)*

**15. The Committee noted the responses to the consultation.**

16. The Committee considered the paper and noted that additional legal issues have been raised since the consultation took place and that these are under consideration. The Committee agreed that this item will be put on the agenda for a later date.

##### *Item 5.2 - Bankruptcy (Scotland) Bill (Papers 5.2, 5.2A, 5.2B)*

17. The Committee considered the papers and the detail of the draft sheriff court bankruptcy rules in **Paper 5.2A**. In particular the Committee considered a policy issue in relation to the prescribed form of petition contained in the draft rules. A number of drafting points were raised by Joel Conn.

18. **The Committee agreed that a single style of petition is appropriate for inclusion in the sheriff court bankruptcy rules with a view to it being adapted as required by users. The Committee agreed a number of additional drafting points.**
19. The Committee noted that John Thompson will meet with the policy holders to discuss the draft rules. The Committee noted that in order to adhere to the implementation timetable, further consideration of the draft rules will require to be carried out by correspondence.
20. **The Committee instructed LPPO to prepare a revised draft instrument to be issued to members for consideration by correspondence.**
21. **The Committee asked John Thomson to provide a drafting note to accompany the revised draft instrument.**
22. The Committee considered the draft rules at **Paper 5.2B** which make provision for consequential rule changes resulting from the proposed new sheriff court bankruptcy rules. The draft instrument also includes a new Chapter 72 of the Rules of the Court of Session.
23. **The Committee agreed that the draft rules contained in Paper 5.2B be submitted to the Scottish Civil Justice Council for consideration and approval.**

#### **Item 6: AOCB**

24. There was no other business raised.

#### **Item 7: Dates of future meetings**

25. Members noted the dates of future meetings:

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

**Scottish Civil Justice Council Secretariat**

**30 August 2016**