

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
RULES REWRITE COMMITTEE
TUESDAY 29 MARCH 2016 AT 4.15PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Lord Menzies (Chair)

Ian Dickson (SLAB)

Kay McCorquodale (Courts Policy Team, Scottish Government)

Jonathan Brown (OSPC, Scottish Government)

Sheriff A G D Thornton (Sheriff of Tayside, Central & Fife)

Jacqueline Harris (Solicitor and SCJC member)

Professor Fran Wasoff (LP member)

In attendance: Jane MacDonald (SCTS Policy and Legislation Branch)

Gillian Prentice (Deputy Principal Clerk of Session)

Support: Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)

Present from item 5.4: Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Caroline Mair (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Inez Manson (Deputy Legal Secretary, Lord President's Private Office)

Susan Brodie (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord President

Lady Wolffe

Sheriff Principal CAL Scott (Sheriff Principal of Glasgow & Strathkelvin)

Ken Forrest (Advocate and SCJC member)

Andrew Stewart QC (Advocate and SCJC member)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers:**
2.2, 3.2, 4.1, 4.1A, 4.1A Annex, 5.1, 5.1A, 5.2, 5.2A, 5.3, 5.3A, 5.4, 5.4A, 5.5, 5.5A, 5.6, 5.6A & 5.6B.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **Members approved the minutes from the previous meeting, as amended in paragraph 16.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

4. **The Committee noted Fran Wasoff attended the reflective meeting of 8 February 2016. The Committee also noted the progress that had been made on actions since the last meeting.**

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments (Oral)

Kay McCorquodale informed the Committee that Scottish Government (SG) is currently in a pre-election period. The Scottish Parliament was dissolved on 23 March in advance of the Scottish Parliamentary elections on 5 May.

The Committee received the following update:

- Land Reform (Scotland) Bill passed Stage 3 on 16 March 2016 and
- Bankruptcy (Scotland) Bill passed Stage 3 on 22 March 2016.

- A draft Limitation (Childhood Abuse) (Scotland) Bill was published on 14 March 2016 and a consultation paper on Developments in Environmental Justice in Scotland was published on 18 March 2016 with responses due by 16 June 2016.
- With regard to implementation of the Courts Reform (Scotland) Act 2014, the office of stipendiary magistrates is to be abolished with effect from 1 April 2016 and existing office holders will become summary sheriffs. The newly appointed summary sheriffs will take up appointment in April and May.

Item 3.2 – Rules Rewrite Tracker (Paper 3.2)

5. Kenny Htet-Khin provided an update on the Rules Rewrite Tracker. In particular he confirmed that responses to the consultation on Simple Procedure would be considered at the Access to Justice Committee meeting on 11 April 2016. The Committee was advised that a number of consultation responses requested consultation on the special claims rules. The Committee discussed the implications of this. The Rules Rewrite Drafting Team advised they were discussing the matter with Scottish Government officials.

Item 4: Justice System Reform: Rules rewrite

Item 4.1 – Update from Rules Rewrite Drafting Team – Note on Discussion Papers (Papers 4.1, 4.1A & 4.1A Annex)

6. **After consideration, the Committee agreed the proposed draft timetable and order in which papers will be considered.**

7. **The Committee agreed that discussion papers will be shared with the Council and other Committees when it is considered helpful to wider policy development. In particular, the Committee agreed to share discussion papers relating to:**

- a) **statement of principle/overriding objectives**
- b) **case management models/case management powers, and**
- c) **form, style and language**

with the Council in due course.

Item 4.2 – Reflective meeting on the rules to date (Oral)

8. Kenny Htet-Khin provided an oral update on the reflective meeting on the rules to date, which took place on 8 February 2016. The purpose of the meeting was

to review the process Committees undertake in considering topics and issues. Information from this meeting has led the drafters to consider areas such as; how to improve the presentation of information to the Committees, how to ensure timescales allow for adequate consultation where necessary, and best practice in the recording of Committee decisions. The feedback received was very helpful and the event was a good opportunity to see how improvements can be made.

Item 5: Proposals for rules

Item 5.1 Courts Reform (Scotland) Act 2014 – sweep up – draft rules provision **(Papers 5.1 & 5.1A)**

9. The Committee considered and agreed that the draft rules, including amendments from today's meeting, be placed before Council for consideration and approval, subject to any stylistic or typographical amendments.

Item 5.2 Correspondence seeking changes to Court Rules – Service of Documents **(Papers 5.2 & 5.2A)**

10. The Committee revisited the correspondence at Paper 5.2A which was originally rolled over from the RRC previous meeting in January 2016.

11. After discussion the Committee agreed, due to ongoing developments throughout SCTS, it would reconsider this issue at its meeting on 25 October 2016.

Item 5.3 Correspondence seeking changes to Court Rules – Form of charge for payment **(Papers 5.3 & 5.3A)**

12. The Committee agreed with the recommendations of Paper 5.3A and instructed the Lord Presidents Private Office (LPPO) to consult with officials of the Office of the Accountant in Bankruptcy, in order to produce draft rules for consideration. The Committee agreed to consider the draft rules by way of correspondence with a view to placing these before the Council for consideration at its meeting on 16 May 2016.

Item 5.4 Courts Reform (Scotland) Act 2014 – S115 – Reform of the permission to appeal procedure **(Paper 5.4 & 5.4A)**

13. The Committee considered Paper 5.4A and agreed that in order to proceed with the implementation of S115, it would be helpful to consult with

the Inner House Judges, the Inner House User Group and with Lord Boyd in his capacity as the Administrative Judge.

14. The Committee agreed to reconsider Paper 5.4A alongside the consultation responses received, at its meeting on 12 July 2016.

Item 5.5 Procedure required to claim expenses from the Scottish Legal Aid Fund (Papers 5.5 & 5.5A)

15. The Committee first considered this issue at its last meeting on 19 January 2016. After further consideration, the Committee requested the LPPO to consult with SLAB and to prepare draft rules for consideration at the meeting on 31 May 2016.

Item 5.6 Bankruptcy (Scotland) Bill (Papers 5.6, 5.6A & 5.6B)

16. After consideration the Committee agreed changes should be made to the Rules of the Court of Session and the Sheriff Court Bankruptcy Rules in consequence of the consolidation of bankruptcy legislation in Bankruptcy (Scotland) Bill. The Committee instructed the Rules Rewrite Drafting Team to produce draft rules for consideration at its meeting on 31 May 2016.

Item 6: A.O.C.B

Item 6.1 Sheriff Appeal Court (Oral)

17. The Committee were informed that the Sheriff Appeal Court (SAC) has identified snagging issues within the SAC rules and that it intends to make proposals for changes to rules. The Drafters informed the Committee they felt it would be beneficial, due to the parliamentary timetable, that any changes be put directly to the Council for consideration.

18. The Committee agreed that proposals for draft SAC rules be placed before the Council for consideration.

Item 7: Dates of future meetings

19. Members noted the dates of future meetings:

- **Tuesday 31 May 2016 at 4.15pm**

- **Tuesday 12 July 2016 at 4.15pm**
- **Tuesday 25 October 2016 at 4.15pm**

Scottish Civil Justice Council Secretariat

March 2016