

SCOTTISH CIVIL JUSTICE COUNCIL – RULES REWRITE COMMITTEE

7 JULY 2015 AT 4.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES (APPROVED)

Members present: Lord Menzies (Chair)
Kenneth Forrest (SCJC member)
Andrew Stewart QC
Sheriff A Thornton (Sheriff of Tayside, Central & Fife)
Ian Dickson (SLAB)
Kay McCorquodale (Courts Policy Team, Scottish Government)
Professor Fran Wasoff (LP member)
Sheriff Principal Stephen (Sheriff Principal of Lothian and Borders) (from Item 5)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (SCTS Policy & Legislation Branch)
Kenneth Htet-Khin (Head of the Rules Rewrite Drafting Team)
Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Susan Brodie (SCJC Secretariat)

Apologies: Jacqueline Harris (SCJC member)
Jonathan Brown (OSPC, Scottish Government)
Sheriff Principal CAL Scott (Sheriff Principal of Glasgow & Strathkelvin)
Lady Wolffe

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present to the fifth RRC meeting and noted apologies.
2. **The Committee agreed not to publish the following papers:**

Papers 4.1, 4.2, 5.1, 5.1A, 5.2, 5.3, 5.4 and 6.1.

Item 2: Proceedings

Item 2.1 Minutes of previous meeting [Paper 2.1]

3. The Committee approved the minutes of the previous meeting dated 26 May 2015 [Paper 2.1] subject to the future meeting date being amended to show it is taking place on Tuesday 24 November 2015.

Item 3: Forward Work Programme

Item 3.1 SCJC Update

4. Susan Brodie provided an update on the activities of the SCJC and the SCJC Secretariat.
5. The Chair thanked Kenneth Forrest for his participation at the SCJC Information Event on Thursday 2 July by delivering the speech on behalf of the Committee.

Item 4: Rules Rewrite

Item 4.1 Update from Rules Rewrite Drafting Team [Paper 4.1]

6. Kenny Htet-Khin provided an oral update on the progress of the rules rewrite project. Members were advised that all the activities on the Rules Rewrite activity tracker were timeous. The Committee was also updated regarding an issue that was brought up at the previous day's SCJC meeting concerning publication of the rules coming into force on 22 September 2015. Announcement of these rules will be published in the Scottish Legal News and Law Society Journal. **The Committee suggested that the Rules Rewrite Drafting Team should investigate publishing the announcement in the Scots Law Times.**

Item 4.2 Legal Terminology in Draft Rules [Paper 4.2]

7. The Chair reminded members this area was highlighted at the RRC meeting of 7 April 2015. The Committee are aware simplification of legal terminology is currently being considered by the Access to Justice Committee for Simple Procedure. However, discussions around a possible future increase of lay representation within Ordinary Cause and Family actions would also indicate these rules require being clear

and easy to understand wherever possible. Discussions included suggestions of glossaries and references.

8. **The Committee agreed this is a matter for Rules Rewrite Proper however; in the meantime proposals for suitable aids such as glossaries and references in new rules were agreed.**
9. **In addition the Committee agreed to seek the views of the Access to Justice Committee before remitting the matter back to the Council.**

Item 5: Proposals for rules

Item 5.1 Rules for a Sheriff Appeal Court (Civil) [Papers 5.1 & 5.1A]

10. Graham Crombie spoke to **Papers 5.1 & 5.1A** and produced an amendment to **paragraph 46 of Paper 5.1, Annex A**. Members considered matters identified in **Paper 5.1, Annex A**, a commentary on the outline of the proposed provisions.
11. The Committee agreed a minor amendment to draft Form 5.2 and for this to be repeated within the interpretation provision in rule 1.2 of the proposed Act of Sederunt.
12. The Committee agreed the appellant would be required to lodge such a process at the same time as lodging a note of appeal.
13. Following discussions at the Committee's previous meeting on the matter of time periods for lodging an appeal, members confirmed they were content that the period should be 28 days.
14. Discussions took place around the availability of the sheriff's note. Members agreed that the proposed Form 5.2 is sufficient to highlight when a note is still required from a sheriff.
15. The Committee discussed the need for effective communication between the SAC and local sheriff courts to ensure that no extract decrees were issued after a note of appeal had been lodged. The Committee was advised that the ICMS project should assist with matters like this, but in the meantime it should be possible for the Clerk to advise the appropriate sheriff clerk when an appeal is lodged.

16. The Committee invited the Rules Rewrite Drafting Team to consider whether it would be possible to reframe the requirement that an appellant enrol for urgent disposal where the appeal concerns order under section 11 of the Children (Scotland) Act 1995, possibly so that the matter could be dealt with when the order for intimation and answers is made rather than requiring a separate motion.
17. The Committee considered that sists of an action should only be permitted for a specific period of time as is the current Inner House practice, in order to improve case management.
18. In relation to questions about the competency of an appeal, the Committee agreed that there was no need for a formal procedure for the Clerk to refer a competency question, and instructed that the draft rules be revised accordingly. It also considered that any references to notes of argument should cross-refer to the rule on notes of argument.
19. The Committee agreed that there was no need to replicate rule 40.19(8)(b) of the Rules of the Court of Session (which deals with the contents of appendices).
20. The Committee instructed that provision should be made in the Rules requiring parties to co-operate in the making up of an appendix so that a single joint appendix could be lodged wherever possible.
21. The Committee also considered that, where a party seeks an order requiring another party to lodge an appendix, a hearing should be fixed only if the motion is opposed.
22. The Committee took the view that it should be for the Court to fix an appeal hearing, rather than the Clerk, and instructed that the Rules should be amended to reflect this.
23. The Committee was content with the other draft provisions that it considered.
24. **The Committee previously agreed at the RRC meeting of 26 May 2015 that further consideration of the draft rules will be carried out by correspondence, in order that an agreed final draft may be considered by the SCJC at its meeting on 28 September 2015. Revisions of Chapter 5 from the meeting of 7 July will be included within such correspondence.**

Item 5.2 Lodging of electronic documents [Paper 5.2]

Item 5.3 Leave to appeal regarding decisions to sist [Paper 5.3]

Item 5.4 Permission to appeal in statutory appeals from the Upper Tribunal [Paper 5.4]

25. Due to this meeting extending, the above papers were briefly discussed.
26. **Members agreed draft rules to be prepared for items 5.2, 5.3 and 5.4; further research to be carried out in relation to each item. The draft rules and outcome of research may be discussed by the committee by way of correspondence.**

Item 6: AOCB

Item 6.1 Correspondence seeking changes to Court Rules [Paper 6.1]

27. Some members of the Committee had also experienced similar issues to the author of the correspondence. Members agreed this area will be looked at during the Rules Rewrite Proper however, they also agreed a solution to this problem be investigated, in the meantime.
28. **Members agreed to consider solutions and put these forward to the SCJC Secretariat over the summer and for this item to be placed upon the agenda of the next RRC meeting of 24 November 2015.**

Item 7: Future Business

Item 7.1 Date of next meetings

- Tuesday 24 November 2015
- Tuesday 19 January 2016
- Tuesday 29 March 2016
- Tuesday 31 May 2016

