

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
RULES REWRITE COMMITTEE
TUESDAY 25 OCTOBER 2016 AT 4.15 PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Lord Menzies (Acting Chairman, SCJC member)

Ian Dickson (SLAB representative)

Cameron Stewart (Scottish Ministers' representative)

Sheriff Principal Turnbull

Kenneth Forrest (Advocate, SCJC member)

Kenneth Campbell, Q.C. (Advocate)

Jacqueline Harris (Solicitor)

Joel Conn (Solicitor)

Ian Shanks (Parliamentary Counsel Office)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)

Support: Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)
Caroline Mair (Deputy Legal Secretary, Lord President's Private Office)
Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)

Apologies: Lord President
Lady Wolffe

Sheriff Thornton

Jane MacDonald (SCTS Legislation Implementation Team)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from the Lord President, Lady Wolffe, Sheriff Thornton and Jane MacDonald.
2. The Committee agreed not to publish the following papers: **2.1, 2.2, 4.2, 5.1, 5.1A, 5.1A and Annexes A-B, 5.2, 5.2A, 5.3, 5.3A, 6.1, 6.2, 6.2A-B 6.3, 6.3A, 6.4, 7.1 and Annexes A- B**

Item 2: Previous meeting

Item 2.1 – Progress of actions from previous meetings (Paper 2.1)

3. **Members noted the progress that had been made on actions since the last meeting and the update on the work of the other committees.**

Item 2.3 – Items by correspondence (Paper 2.2)

4. **Paper 2.2** provided a summary of the outcome of consideration given to the following matters raised by correspondence since the last meeting:
 - Paper 2016/18 explained that the Committee meeting on 12 July 2016 was not quorate. Members were asked to consider the meeting papers of new and to provide a response and any comments to the Secretariat by 30 August 2016. The Secretariat drafted a Note of decisions on the papers and this has been published on the SCJC website with an explanation on the issue of quorum.
 - Paper 2016/19 asked members to consider and approve the draft sheriff court bankruptcy rules. The Committee approved the draft rules which were submitted to Council for consideration and approved on 3 October 2016. The rules were subsequently made on 6 October 2016.
 - Paper 2016/21 invited the Committee to approve the commission of research into petition and summons procedure; to approve the award of a direct contract to Dr Stephen Thomson and to authorise that a request for funding be submitted to SCJC for consideration and approval. The Committee approved the proposals which were subsequently considered and approved by Council on 23 September. Funding of up to £8,000.00 was approved for completion of the research.
5. **The Committee noted Paper 2.2**

Item 3: Proceedings

Item 3.1 – Membership (Oral)

6. The Chair provided an update on membership of the Committee:
 - Sheriff Principal Turnbull, was appointed as a RRC member (and ATJ) on 3 October 2016 to replace SP Scott who has recently retired.
 - Kenneth Campbell, Advocate was appointed by SCJC as a member of the RRC for a period of 3 years, with effect from 3 October 2016.
 - Jonathan Brown, Office of the Scottish Parliamentary Council, resigned his appointment with effect from 2 October 2016. Ian Shanks, was appointed as his direct replacement by SCJC on 3 October 2016.
7. **The Committee noted the update.**

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

8. Cameron Stewart provided members with an update on legislative developments in the Scottish Government. He advised that there are 15 Bills in the Government's Programme for Government which was published in September. Of particular interest are: Contract (Third Party Rights) Bill; Expenses and Funding of Civil Litigation Bill; Limitation (childhood Abuse) Bill. There are a number of subordinate legislation item under consideration. Of particular interest are: Court Reform and Legal Aid Orders relating to the introduction of Simple Procedure and Orders to increase Court Fees which are to be laid shortly and to be brought into effect on 28 November.

Item 4.2 - Rules Rewrite Tracker (Paper 4.2)

9. Kenneth Htet-Khin provided an update on outstanding work. **The Committee noted Paper 4.2.**

Item 5: Justice System Reform

Item 5.1 RRP Discussion Paper 4: Case Management Powers (Papers 5.1, 5.1A & Annexes A-B)

10. Kenneth Htet-Khin provided an overview of Paper 5.1A. The Committee considered some specific case management powers that would flow from the *statement of principle* which the Committee has agreed previously. The Committee discussed how these powers could potentially be used within the case management model proposed. In particular, the Committee considered the Scottish Civil Courts Review recommendations on case-flow management and active judicial case

management; the potential basis for categorisation of cases; and the use of standard orders.

11. The Committee reached a consensus on the broader principles and instructed work to be progressed further under this arm of the project plan.

Item 5.2 RRP Discussion Paper 5: Otiose provisions (Paper 5.2 and 5.2A)

12. Caroline Mair provided an overview of Paper 5.2A. In particular, the Committee previously considered and agreed that the drafting team would seek views from operational staff in the sheriff courts and Court of Session about redundant or rarely used rules. Miss Mair advised that questionnaires covering the Rules of the Court of Session and the Ordinary Cause Rules were issued and completed by staff during the course of the summer. Paper 5.2A provided a summary of the feedback received. SCTS Legislation and Implementation Team (LIT) has sought an opportunity to provide their views on the provisions and for those views to be incorporated into the discussion paper which the Committee will consider.

13. The Committee agreed to postpone consideration of the discussion paper until the meeting on 6 December 2016 in order that LIT may provide views on the rules provisions.

Item 5.3 Courts Reform: Implementation of S115 Courts Reform (Scotland) Act 2014 (Paper 5.3, 5.3A)

14. Caroline Mair provided an overview of these papers. It was noted that the Committee has previously considered responses to a consultation about implementation of Section 115 of the Courts Reform (Scotland) Act 2014. The LPPO consulted the Lord President to seek his views and the Secretariat has obtained information from Scottish Government on the policy intention of S31A.

15. The Committee discussed the issues arising about implementation of Section 115 of the 2014 Act and considered a number of potential options.

16. The Committee agreed to submit the following recommendation to the Council for consideration:

- **The Council will be invited to agree that partial implementation of section 31A of the Court of Session Act 1988 (as introduced by section 115 of the Courts Reform (Scotland) Act 2014) is appropriate and that the Council should contact the Scottish Government to seek the partial repeal of that section and, if necessary explore alternative safeguards to the three judge review mechanism.**

Item 6: Proposal for Rules

Item 6.1 Correspondence seeking changes to court rules – Service of documents **(Paper 6.1)**

17. The Committee considered Paper 6.1 which provides an update to an issue which the Committee has previously considered: correspondence from Stephen Brand, Solicitor described problems he encountered with court citations. It was noted in the correspondence that Royal Mail had failed to return citations to court timeously and that this could have potential impact on court decrees been granted in absence erroneously.

18. The Committee notes that SCTS has had discussions with Royal Mail and has clarified and agreed procedures with them for the return of court documents which have not been delivered. There have been no further issues raised with SCTS about the procedures for the return of court citations by Royal Mail.

19. The Committee instructed the Secretariat to write to Mr Brand providing an update and advising that the subject of service of documents generally is under consideration and that on the specific matter of returned citations, the Committees' consideration of the matter has now concluded.

Item 6.2 Correspondence seeking changes to court rules – Court of Session Jury Precepts **(Paper 6.2, 6.2A, 6.2B)**

21. Karen Stewart provided an overview of these papers. The Committee considered a request from SCTS seeking changes to the wording in the Form of Jury Precept (Form 37.2-A) contained in the Rules of the Court of Session. The SCTS has implemented a new process for the process of citing jurors. During the pilot process, an issue arose about the wording contained in the jury precept form and requests amendments of the form as soon as possible to provide clarity of procedures in court operations.

22. The Committee approved the draft rules in Paper 6.2B and approved that they be submitted to Council for consideration at its meeting on 21 November 2016.

Item 6.3 Request for court rules – Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 2016/Small Business, Enterprise and Employment Act 2015 **(Papers 6.3, 6.3A, 6.2B)**

23. The Committee considered a policy paper **(Paper 6.3A)** from the Office of the Advocate General (OAG), requesting changes to rules of court arising from the Small Business, Enterprise and Employment Act 2015 and the Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 2016. A draft instrument was provided for consideration at **Paper 6.2B**.

24. The Committee considered the draft instrument which makes consequential amendments to existing rules arising from changes in the 2016 Rules and the 2015 Act. The 2015 Act inserted a number of new provisions into the Company Directors Disqualification Act 1986 and the Insolvency Act 1986 which create several new types of court order.

25. The Committee agreed that these new application should be applied for by way of petition.

26. The Committee approved the draft rules at Paper 6.2B and agreed that they be submitted to the Council for consideration at its next meeting on 21 November 2016.

Item 6.4 Request for Amendment to rules of court – vexatious litigants (Paper 6.4)

27. Caroline Mair provided an overview of Paper 6.4 which invites the Committee to consider a request to making rules of court setting the procedure governing applications to initiate court actions by vexatious litigants under the Vexatious Actions (Scotland) Act 1898.

28. The request is made by the Deputy Principal Clerk of the Court of Session who cites practical operational difficulties arising with the lack of rules provision for these applications under the 1898 legislation.

29. The Committee instructed the LPPO to prepare draft rules for consideration at a later meeting date.

Item 7: Rules review

Item 7.1 Judicial Review proceedings (Paper 7.1)

30. Due to the lateness of the hour, the Committee postponed consideration of this agenda item until the next meeting on 6 December 2016.

Item 7.2 Sheriff Appeal Court – rules review (Oral)

31. The Chair advised the Committee that at the Council meeting on 3/10/16, Sheriff Principal Abercrombie proposed that the review of the rules relating to the Sheriff Appeal Court be brought forward from mid-2017 to now, in order to address some issues that have arisen since the Sheriff Appeal Court was established.

32. The Council has agreed in principle with the proposal, subject to resource implications, and agreed that Sheriff Principal Abercrombie discuss this matter further with the Secretariat and report back on the agreed timescales at the next Council meeting.

33. The Committee noted the position

Item 8: AOCB

34. Lord Menzies informed the Committee about a request for amendment to the Rules of the Court of Session from the Inner House Clerks. The request relates procedural mechanism in applications from the Sheriff Appeal Court for permission to appeal to the Court of Session.

35. **The Committee discussed the request and instructed the LPPO to prepare draft rules for consideration by the Committee for the next meeting.**

Item 9: Dates of future meetings

36. The Committee noted the dates of future meetings:

- 6 December 2016 at 4.15 pm
- 21 February 2017 at 4.15 pm

Scottish Civil Justice Council Secretariat

October 2016