

# MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

## RULES REWRITE COMMITTEE

TUESDAY 3 OCTOBER 2017 AT 4.15 PM

JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

### MINUTES

**Members Present:** Lord Menzies (Chairman)  
Lady Wolffe  
Sheriff Thornton  
Joel Conn (Solicitor)  
Jaqueline Harris (Solicitor)  
Ian Shanks  
Ian Dickson (SLAB)  
Gery McLaughlin (Scottish Government)

**Support:** Edward McHugh (Lord President's Private Office)  
Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)  
Mandy Williams (Deputy Secretary, Scottish Civil Justice Council)

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

1. The Chairman welcomed those present and noted apologies from Lord President, Sheriff Principal Turnbull, Jane MacDonald, Kenneth Forrest, Kenneth Campbell and Walter Drummond-Murray. The Chairman also welcomed Gery McLaughlin who is representing the Scottish Government at today's meeting.
2. The Chairman advised members that comments have been received on today's papers from Kenneth Campbell Q.C. for consideration in his absence.
3. **The Committee agreed not to publish the following papers: 2.1, 2.2, 3.2, 5.1, 5.1A.**

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

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

4. **The Committee noted the progress that had been made on actions since the last meeting and the committee activity report provided.**

### *Item 2.2 Items by correspondence (Paper 2.2)*

5. Paper 2.2 provided information on an item by correspondence considered by the Committee - Paper 2017/12 was issued on 23 May 2017, inviting members to approve the minutes of the previous meeting and note progress on outstanding business.

6. Responses were invited by close of business on 5 June 2017. Members were advised that a nil response would be treated as consent, unless noted otherwise. One response was received approving the papers. The approved minutes of the meeting of 21 February 2017 were thereafter published on the SCJC website.

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

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

7. Gery Mclaughlin provided an update on legislative developments. In particular, it was noted that the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is at stage 1 of the parliamentary process and that former Sheriff Principal Taylor is due to give evidence on the Bill later this month. It is expected that stage 1 will be complete in December 2016. Following a decision of the Making Justice Work Programme Board, Orders for commencement of Simple Procedure have been delayed until Autumn 2018 to enable a smooth transition and ensure the needs of court users are met.

#### *Item 3.2 Rules Rewrite Tracker (Paper 3.2)*

8. **The Committee noted the content of Paper 3.2.**

9. Lady Wolffe thanked the Secretariat for the paper and noted that it is very helpful for members.

### **Item 4: Justice System Reform**

#### *Item 4.1 Rules Rewrite Project Update (Paper 4.1)*

10. **The Committee noted the contents of Paper 4.1.**

11. Karen Stewart provided an overview on the ongoing work and timescales for Phase 2 of the project. The Committee noted that the Rules Rewrite Drafting Team anticipate that a report on Phase 2 may be available in the spring.

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

### *Item 5.1 Proposals for court rules – Criminal Finances Act 2017 (Papers 5.1, 5.1A)*

12. Karen Stewart introduced these papers. Paper 5.1A is a rules request from the Scottish Government arising from the provisions of the Criminal Finances Act 2017 (“the Act”). Paper 5.1 discusses that request and contains related input from the Secretariat, Crown Office, SCTS Legislation Implementation Team (“LIT”) and the Lord President’s Private Office (“LPPO”).

13. The Committee noted that the Act makes a number of changes to the Proceeds of Crime Act 2002 (“POCA”) and the Anti-Terrorism Crime and Security Act 2001 (“ACSA”), regarding civil recovery proceedings in Scotland and that it makes provision for a number of new applications to come before the civil courts.

14. The Committee discussed the proposals for handling the new civil orders available under the Act and agreed that it would be appropriate to align procedures for these new applications with those already in place for handling applications under POCA and ACSA in the sheriff court and the Court of Session.

**15. The Committee made a number of decisions on the proposals set out in the papers and instructed the Lord President’s Private Office to prepare draft rules for consideration. Given the timescales for implementation, the Committee agreed that draft rules should, in due course, be issued to members for consideration by correspondence.**

## **Item 6: Rules Review**

### *Item 6.1 Review of Sheriff Appeal Court Rules - update (Oral)*

16. Karen Stewart provided an update on the review and advised that the Secretariat and the Rules Rewrite Drafting Team have had a number of meetings with the Sheriffs Principal and the Sheriff Appeal Court clerks to discuss what improvements could be made to the rules. It is anticipated that a paper will be ready for members to consider at the next committee meeting, setting out the views of the Sheriffs Principal and the Sheriff Appeal Court clerks.

## **Item 7: AOB**

17. Jacqueline Harris provided feedback to members on the recent Rules Rewrite Project summer tour event held in Edinburgh, where she attended to represent the Council. She advised that the key theme emerging was the practical experience of the reforms so far and raised concerns about the resources required for the implementation of the new framework.

18. The Secretariat confirmed that the membership of the working groups involved representation from the wider justice system to ensure any resource implications could be considered at an early stage in the project.

19. The Committee discussed and agreed that in general terms, those with an interest and who are not already represented on the various working groups could submit comments to the secretariat at any stage and these would be considered. It was noted that the SCJC website has detailed information on the remits and membership of the working groups and contact information for the secretariat. This is of course in addition to the plans for wider public engagement in due course, outlined in the Rules Rewrite Project First Report.

#### **Item 8: Dates of future meetings**

20. Members noted the dates of future meetings:

- 6 February 2018 at 4.15pm
- 5 June 2018 at 4.15pm

**Scottish Civil Justice Council Secretariat**

**October 2017**