

SCOTTISH CIVIL JUSTICE COUNCIL – RULES REWRITE COMMITTEE

07 APRIL 2015 AT 4.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES (APPROVED)

Members present: Lord Menzies (Chair)
Lady Wolffe
Jacqueline Harris (SCJC member)
Kenneth Forrest (SCJC member)
Andrew Stewart QC
Ian Dickson (SLAB)
Jonathan Brown (OSPC, Scottish Government)
Kay McCorquodale (Courts Policy Team, Scottish Government)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Kenneth Htet-Khin (Head of the Rules Rewrite Drafting Team)
Luke McBratney (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Mandy Williams (Deputy Secretary to the SCJC)

Apologies: Lord President
Sheriff Principal CAL Scott (Sheriff Principal of Glasgow & Strathkelvin)
Sheriff A Thornton (Sheriff of Tayside, Central & Fife)
Professor Fran Wasoff (LP member)
Jane MacDonald (SCTS Policy & Legislation Branch)
Roddy Flinn (Secretary to the SCJC)

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers:
4.1, 5.1, 5.1A and 5.1B**

Item 2: Previous Meeting

Item 2.1 – Minutes of Previous Meeting [Paper 2.1]

- 3. Members agreed the minutes from the previous meeting.**

Item 2.2 – Action points from previous meeting [Oral]

- 4. Members noted discussions are still on-going in relation to the private member's area on the website. A review is being undertaken by SCTS IT and issues have been identified in relation to multi-site licences. This is being explored further however a solution is not expected soon.**

Item 3: Making Justice Work/SCJC Update [Oral]

5. Kenny Htet-Khin provided an oral update on developments under the Making Justice Work programme. He advised that work is underway in relation to the new SCTS case management system. Kainos, the appointed contractors, have completed the discovery stage and are moving into the developments stage.
6. Mandy Williams provided an update on the activities of the SCJC, SCJC Secretariat and the other SCJC Committees.

Item 4: Rules Rewrite Project

Item 4.1 – Rules Rewrite Project Activity Tracker [Paper 4.1]

7. 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.
8. He advised that there are three sets of rules being drafted that are not on the activity tracker. These relate to implementation of sections 38, 92 and 117 of the Courts Reform (Scotland) Act 2014 ("the Act"). Due to implementation timescales and on account that there are no policy issues arising from these rules, it is intended that they be considered directly by the SCJC.

9. The first relates to transfers and remits of cases in terms of section 92 of the Act. It is anticipated that the rules will be in short compass and will simply address procedural matters, therefore, there are not any significant policy issues arising that would need to be considered by the Committee.
10. The second set of rules relate to appeals to the UK Supreme Court under section 117 of the 2014 Act. The requirement for rules is still being considered. If any rules are required, they are likely to be technical in nature and accordingly no policy issues arise.
11. The final set of rules relate to the competence of the sheriff under section 38 of the 2014 Act. This provision extends the jurisdiction of the sheriff in relation to actions for proving the tenor and reduction. This matter is currently being considered by the SCJC by correspondence and simply replicates the Court of Session rules. The Chair advised the Committee that some concern has been raised in relation to the terminology used within the draft rules and whether this was in keeping with the spirit of the Rules Rewrite Programme. This was discussed and **members agreed that the terms required to be used in the rules as they relate to substantive civil remedies. It was agreed that it would be going too far to require the rules to set out and explain the circumstances in which the remedies were appropriate.**
12. **Members noted the progress of the work under the Rules Rewrite Project.**

Item 5: Proposals for rules

Item 5.1 – Judicial Review Procedure [Papers 5.1, 5.1A and 5.1B]

13. Kenny Htet-Khin spoke to **Papers 5.1, 5.1A and 5.1B** which presented the policy instructions and draft rules required to implement the changes to Judicial Review procedure. He advised that the draft had previously been considered by the reference group, an Immigration Practitioners working group and Committee member Jonathan Brown in order to ensure it met the policy intention and for styling purposes.
14. He advised that subsequent amendments have been made to the style forms, which would be shared with the Committee following the meeting.

15. The Committee was advised that the draft instrument is due to be considered by the SCJC at its May meeting. Following approval, the Council would require to consider any arising fees implications.

16. **Members discussed and agreed a number of amendments to the draft provisions. It was agreed that an amended draft would be circulated to the Committee.**

17. **The Committee thanked the reference group for its work.**

Item 6: A. O. C. B

18. No other business was raised.

Item 7: Date of Next Meetings

19. The next meetings were agreed as follows:

- Tuesday 26 May at 4.15pm
- Thursday 9 July at 4.15pm

**Scottish Civil Justice Council Secretariat
April 2015**