

ITEM 3.1:

RULES REWRITE WORKING GROUP

Purpose

1. To provide the Committee with a brief overview of the Rules Rewrite Working Group (“RRWG”).

Background

2. In order to facilitate the wider implementation of civil courts reform, a “Rules Rewrite” project has been initiated under the remit of the Making Justice Work Project Board 1.
3. At its meeting on 10 June 2013 the Scottish Civil Justice Council (“SCJC”) agreed the creation and remit of a working group to carry out the methodology phase of the Rules Rewrite project.

Discussion

4. The following is an extract from the Paper 3.3 Forward Work Programme provided to the SCJC at its meeting of 10 June 2013:

5. *The “Rules Rewrite” project has been commenced for the following reasons:*

5.1 *The Reform Agenda. The justice system in Scotland is subject to a major reform agenda which includes a once in a generation reform to the civil justice system as proposed in Lord Gill’s “Civil Courts Review”.*

Those reforms are predicated on taking a different philosophical approach to the operation of the civil courts which includes a shift towards the judiciary taking greater control over the pace and conduct of litigation, and adopting court procedures that are more proportionate to the relative cost of each case.

That will entail methodically working through each of the existing rules of court, and issuing updated rules that can better support the overarching objectives of delivering a modern civil justice system that is fit for the 21st century.

5.2 *Consolidation. The current rules of court have arisen on a piecemeal basis over several decades, and in some cases centuries. They reflect the multiple outcomes of having separate rule making bodies with differing*

priorities operating over differing timelines. As a consequence there is a level of duplication and specialisation of rules which adds an unnecessary layer of complexity and cost to court procedure.

There is a general recognition that significant benefit would flow from making those rules more accessible to all court users through a process of consolidation, harmonisation and simplification. That change would contribute directly towards the overarching MJW objectives which includes having: "Court procedures that are as easy as possible to understand and access".

5. The remit of the RRWG will be to:

- *consider the vision and objective of the new rules;*
- *undertake a review of the approach that other jurisdictions have taken when undertaking similar projects such as England and Wales and Australia to establish if any lessons can be learned (research may require to be commissioned in respect of this);*
- *develop and submit to the SCJC a "rules rewrite methodology";*
- *create a "style guide" to underpin the drafting of the new rules (there requires to be consistency in approach to rule drafting for example, terminology, language, between the civil courts and across the different disciplines such as family and PI);*
- *agree the format and guidance for "drafting instructions" whether this be through the committee structure or the SCJC Secretariat; and*
- *develop an annual rules rewrite programme which enables specific phases of rules to be prioritised."*

6. Arrangements for the establishment of the RRWG are currently being taken forward by the SCJC Secretariat. It is envisaged that the RRWG will report to the SCJC in spring 2014. The Group's considerations will assist in developing the SCJC's business programme and, therefore, the forward work plans for SCJC committees.

Recommendation

- 7. The Committee is invited to note the planned establishment of the RRWG and the implications of the Group's work on the future work plan of the Committee.**

Scottish Civil Justice Council Secretariat

16 August 2013