

INTRODUCTION

Thank you, Roddy.

I would like to share with you some in depth detail of what the Rules Rewrite Committee have achieved during this past year and how we have gone about our task.

WHAT HAS THE COMMITTEE ACHIEVED?

The Rules Rewrite Committee started life as the Rules Rewrite Working Group and had its first meeting on 18 September 2013. The group had been initiated by the Scottish Civil Justice Council with the task of delivering a fully integrated body of rules that can support a court system that's fit for the 21st century.

The Rules Rewrite Working Group had a wide remit. It was to consider the vision and objective of new rules and undertake a review of the approach that other jurisdictions have taken when undertaking similar projects. We considered work done in England and Wales, Australia, Canada and others to establish if any lessons could be learned. The Working Group was to create a "style guide" to underpin the drafting of the new rules and agree the format and guidance for "drafting instructions" for any new rules. Finally, the group was to develop an annual rules rewrite programme which would enable specific phases of rules to be prioritised.

A delegation from the committee visited London to learn from a similar project for England and Wales. Unfortunately no visit was necessary for overseas!

The early development of a style guide for the rules rewrite project was particularly important. This guide requires that the drafter should have at the forefront of their mind the guiding principles of the SCJC: that the rules should be simple, modern and accessible. It requires that the structure of rules should, where practicable, be chronological. The guide cautions against the use of Latin terminology except where there is a good reason for preferring it; and it encourages drafting that is permissive about the use of technology.

On publishing its final report, the group then became the Rules Rewrite Committee of the Scottish Civil Justice Council, with a reviewed remit that included the responsibility for general care and maintenance of the rules.

The initial focus of the committee has been, alongside other Committees, the implementation of the Courts Reform (Scotland) Act 2014.

The Committee's first significant piece of work was a complete re-write of the judicial review chapter of the Court of Session Rules. These rules were required to implement the changes to judicial review procedure made by the 2014 Act: the introduction of the three month time limit, and new permission stage. But it was also an opportunity to put into effect the guidance contained in the style guide and to try to reflect – as much as is possible – the new approach to rules drafting endorsed by the Rules Rewrite Committee. The language of the new chapter 58 is more straightforward and the structure is chronological: the reader is taken through the process step-by-step. The terminology is more user-friendly. Gone is the need to explain to your client why their third of fourth visit to the court is, in fact, a

“continued first hearing”. Instead, each petition has a procedural hearing and a substantive hearing. The drafting is gender neutral. And the rules are designed to ensure that judicial reviews are dealt with in an appropriately pacy manner. They contain stricter timescales, and they require the court to have regard to the need for the speedy determination of these petitions at the various points where its expanded case management powers bite.

The SCJC’s officials have worked closely with Scottish Government officials in this implementation project. Introducing change on this scale is innately complex, and not everything can be achieved by court rules. For example, practitioners should be aware of article 4 of the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provision) Order 2015. Clearly, the principles of plain-language drafting have not yet extended to the naming of instruments! This is a transitional provision that governs the situation where the grounds giving rise to the judicial review first arise before the commencement date – 22nd September – but the petition for judicial review is lodged after that date. In these cases the three month time limit will apply from the 22nd September. So those representing petitioners will have until the 22nd December to get their petitions in. I predict a busy Christmas for the petitions department!

The policy behind these rules was developed by a small reference group of the Committee. A second reference group, looking at civil procedural rules for the Sheriff Appeal Court, has been set up. This court’s criminal jurisdiction will begin on 22 September 2015 and its civil from January 2016. Policy instructions are being considered by the Committee. We intend for them to be submitted to the Council for approval in the Autumn.

You will appreciate, then, the considerable work the Committee, its reference groups, drafters and secretariat members have done so far and will continue to do throughout the coming months.

WHAT THE COMMITTEE WILL DO NEXT

This Committee will continue with implementation of the remaining areas of the Courts Reform (Scotland) Act. Thereafter it will begin to focus on the comprehensive rules rewrite project itself: developing a framework for reviewing the rules prepared under the project and beginning a structural review of the rules themselves.

You will hear from all of the Committees the vast amount of work which has been carried out under the guidance and leadership of the Council and I hope you will now have a clear picture of what the Rules Rewrite Committee has achieved so far and what we envisage for the future.

I would like to take this opportunity to thank all members of the Rules Rewrite Committee for the work they have gladly undertaken: Lord Gill, who chaired this Committee and also specific thanks to Lord Menzies, who readily chaired the Committee meetings in Lord Gill's absence.

I'd like to now take this opportunity to introduce you to Maria Maguire QC who will speak on behalf of the Personal Injury Committee.