

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL – RULES
REWRITE WORKING GROUP

12 DECEMBER 2013 AT 16.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES

Members present: Lord President (Chair)
Lord Menzies
Sheriff Principal Scott (Sheriff Principal of Glasgow and Strathkelvin)
Kenneth Forrest (Advocate)
Duncan Murray (Solicitor)
Professor Fran Wasoff (LP Member)
Sarah Wolffe (Advocate, papers member)

In attendance: Roddy Flinn (Legal Secretary to the Lord President and Secretary to the SCJC)
Ondine Tennant (Deputy Secretary to the SCJC)
Neil Robertson (Policy Officer, SCJC)

Apologies: Jonathan Brown (OSPC, Scottish Government)

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. It was considered that Paper 4.1C need not remain private and should be published. **The Committee agreed not to publish the following papers: 4.1, 4.1A, 4.1B, 4.1D, 4.2, and 4.2A .**

Item 2: Previous Meeting

Item 2.1 – Minutes of Previous Meeting [Paper 2.1]

3. **Members agreed the minutes from the previous meeting.**
4. Members considered paragraph 15 of the draft minutes and discussed whether the view that had been reached was that separate rules should be retained for the Court of Session and sheriff court or whether the point had

been considered only in relation to retaining the simple procedure as a distinct set of rules.

5. Members considered the question anew. There was some discussion of the suggestion of the Scottish Civil Courts Review that there should be a common approach in personal injury proceedings in the Court of Session and the specialist personal injury court. It was also considered that, to aid legal certainty, there was merit in using identical wording where possible and appropriate in order that the higher courts' decisions on the meaning of particular rules will be relevant and binding.
6. **Members agreed that while there should be distinct and separate rules for the simple procedure, sheriff court and Court of Session, a consistent framework should be established, so that where appropriate, the rules of the sheriff court and Court of Session should be identical in procedure and wording, wherever practicable.**
7. In light of this discussion, it was considered that the query arising in relation to para. 15 had been superseded and **members agreed the minutes of the last meeting.**

Item 2.2 – Action points from previous meeting [Oral]

8. Ondine Tennant advised that all action points from the previous meeting had either been or were in the process of being taken forward and that all were tabled for discussion at the meeting.
9. **Members noted the progress since the last meeting.**

Item 3: Making Justice Work / SCJC Update

Item 3.1 – Making Justice Work programme [Oral]

10. Roddy Flinn provided an oral update on developments under the Making Justice Work programme, outlining the relevant points in the forthcoming Courts Reform (Sc.) Bill for the Rules Re-write project and advising that the recently announced plans for merging the SCS and the Scottish Tribunals Service are to be handled under the MJW programme.

Item 4: Rules Rewrite Project

Item 4.1 Research and recent visit to England and Wales [Papers 4.1 and 4.1A-D]

11. Members considered Papers 4.1 and 4.1A-D, which outlined preliminary findings from research and meetings with counterparts in other jurisdictions.
12. The question of a unitary set of rules for the sheriff court and Court of Session having already been discussed under agenda item 2.1, members considered the content and nature of an overriding objective or statement of principles within the rules. It was thought that placing an objective within the rules would be essential to ensuring effective case management but that were it to have an overriding and binding effect that that might cast doubt on the applicability of individual rules and lead to satellite litigation.
13. **It was decided that there should be a statement of principle and purpose in both the sheriff court and Court of Session rules, to which the court should have due regard, but that it should not override the other rules of court. It was agreed that the statement should be founded on recommendation 112 of the Scottish Civil Courts Review, which proposed a statement within the rules to the effect that their purpose is to provide parties with a just resolution of their dispute in accordance with their substantive rights, in a fair manner with due regard to economy, proportionality and the efficient use of the resources of the parties and of the court. It was considered that speed should be included in this list.**
14. **Members noted the Secretariat's intention to provide a report and recommendations on the range of matters arising from the research which has been carried out, for consideration at the Group's January meeting.** The Group was asked whether there were any particular points arising from the visit that should be included in the final report. In relation to case management, it was remarked that fixing a trial date at the first case management hearing might not always be appropriate. For example, in commercial actions, it may be helpful to manage a case in stages. It was also commented that making draft rules available prior to their being made, and introducing changes to set timescales would be of assistance to users.

Note of thanks

15. *Members wished to record their thanks to the Secretariat and to the Master of the Rolls' policy team for arranging the recent visit to England and Wales, which had proved extremely informative.*

Item 4.2 Rules programme and Courts Reform (Sc) Bill implementation [Papers 4.2 and 4.2A-B]

16. Members considered Papers 4.2 and 4.2A-B, which outlined a draft timetable for the rules rewrite programme for 2014/15. **It was agreed that wherever possible there would be at least a 3 month laying period for rules. In light of the implementation timescales and the fact that many rules changes are likely to be technical and consequential in nature, it was agreed that public consultation should not be adopted as standard, but that it should be considered on a case by case basis.**
17. **Members approved the draft timetable contained in paper 4.2A and agreed to the Secretariat preparing a rules rewrite programme on the basis of Paper 4.2A for consideration at the next meeting.**

Agenda Item 5: A.O.C.B

18. No other business was raised.

Agenda Item 6: Dates of Next Meetings

19. The next meeting will be held on 16 January 2014 at 4.15 p.m.

**Scottish Civil Justice Council Secretariat
December 2013**