

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

RULES REWRITE COMMITTEE

MONDAY, 20 NOVEMBER 2023

Judges Conference Room, Level +2, Parliament House

MINUTES

Present: Lord President (*Chair*)
Sheriff Kenneth Campbell KC
Lord Colbeck (*by video*)
Joel Conn
Ian Dickson
Summary Sheriff Roddy Flinn
Duncan Hamilton KC (*by video*)
Jaqueline Harris
Lord Richardson
Walter Drummond-Murray

Apologies: Mark Boni

In Attendance: Jonathan Brown (*Parliamentary Counsel Office*)
Edward McHugh (*LPPO*)

Support: Craig McCorkindale (*SCJC*)

Item 1 - Welcome, apologies and agreement of private papers

1. The Chair welcomed the Committee members present and noted the one apology received. The Committee agreed not to publish papers 3.1 and 3.1A.

Item 2 - Updates since the last meeting

Item 2.1 - Items by Correspondence (Paper 2.1):

2. The Committee noted the two items considered by correspondence:

Paper 2023/22 – approved the issue of a Targeted Consultation on the Ordinary Procedure Rules. The consultation papers are available online.

Paper 2023/23 – approved the minutes of the previous meeting on 19 June 2023. Those minutes are available online.

Item 3 - Work Programme:

Item 3.1 – Consulting on the Ordinary Procedure Rules (Papers 3.1 & 3.1A):

3. The consultation period will remain open until 30 November 2023; with a further 2 responses expected. The Committee discussed the analysis of the 13 responses received to date (**Paper 3.1A**). The key points noted from that discussion were:
 - No alternate approaches were suggested on the general direction of travel;
 - Some consultees had read and commented on the rules in isolation. Others sought out the policy intent from the procedural narrative, some had misunderstood the policy intent. For the next consultation exercise the Committee will consider providing different accompanying documents that can be more easily read in the same order as the rules (*explanatory notes / practice notes / simple flow charts / narratives on selected procedures etc.*);
 - Rearranging the layout of some rules may assist. This might include locating the rule on judicial continuity after the other case management rules to give the commitment to case-flow management more prominence. That would reflect that active judicial case management would only be used by exception;
 - When responding to the feedback on the use of inquisitorial approaches, the rationale behind the judiciary controlling the pace and conduct of cases can be conveyed within the Response to Consultation report;
 - An implementation timetable will require significant time built in for:
 - Complex modelling of the likely regulatory impacts for legal aid funding;
 - Complex modelling of the likely regulatory impacts for judicial taxations;
 - Negotiating the resultant changes with practitioners;
 - Training court officials and the judiciary; and
 - Checking that the evolving IT systems are able to support the anticipated digitisation that underpins these rules.
4. The Committee aims to absorb the feedback received into its next version of the draft rules. More detail on the revocations expected will be added. The specialised rules that will remain in use will be listed. The Committee will consult again by autumn 2024.
5. **The Committee noted that:**
 - **The final report on the Analysis of Responses will be issued for approval by correspondence during December; and**
 - **The subsequent Response to Consultation report will be prepared for consideration by the Committee at its next meeting.**

Item 4 - Any other business

6. There was no other business raised.

Item 5 – Dates of future meetings

7. The proposed meeting dates for 2024 will be circulated by email.