

SCOTTISH CIVIL JUSTICE COUNCIL – RULES REWRITE COMMITTEE

24 NOVEMBER 2015 AT 4.15 PM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

MINUTES

Members present: Lord Menzies (Chair)
Lady Wolffe
Sheriff A Thornton (Sheriff of Tayside, Central & Fife)
Ian Dickson (SLAB)
Kay McCorquodale (Courts Policy Team, Scottish Government)
Professor Fran Wasoff (SCJC member)
Jacqueline Harris (SCJC member)
Jonathan Brown (OSPC, Scottish Government)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (SCTS Policy & Legislation Branch)
Kenneth Htet-Khin (Head of the Rules Rewrite Drafting Team)
Inez Manson (Deputy Legal Secretary, LPPO)
Caroline Mair (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Mandy Williams (Deputy Secretary, SCJC Secretariat)
Susan Brodie (SCJC Secretariat)

Apologies: Sheriff Principal CAL Scott (Sheriff Principal of Glasgow & Strathkelvin)

Non attendance: Kenneth Forrest (SCJC member)
Andrew Stewart QC

Item 1: Introduction, welcome, apologies and agreement of private papers

1. The Chair welcomed those present to the seventh RRC meeting and noted apologies.

2. **The Committee agreed not to publish the following papers:
Papers 2.3, 4.1, 4.2, 4.2A, 5.1, 5.1A-B, 5.2 and 5.2A-B**

Item 2: Previous meeting

Item 2.1 Minutes of previous meeting [Paper 2.1]

Item 2.2 Minutes of extraordinary meeting [Paper 2.2]

3. **The Committee approved the minutes of the previous meeting dated 7 July 2015 [Paper 2.1] and the minutes of the extraordinary meeting which took place on 14 September 2015 [Paper 2.2].**

Item 2.3 Progress of actions from previous meeting [Paper 2.3]

4. **Members noted the progress of actions since the meeting of 7 July 2015.**

Item 3: Work Programme

Item 3.1 SCJC Update

5. Susan Brodie provided an update on the activities of the SCJC and the SCJC Committees.

Item 4: Rules Rewrite

Item 4.1 Update from Rules Rewrite Drafting Team [Paper 4.1]

6. **Kenny Htet-Khin** provided an oral update on the progress of the rules rewrite project. Members were advised of the priorities of the Rules Rewrite Drafting Team and that it is planned to have draft policy proposals and draft instruments where necessary to be considered at the RRC next meeting in January 2016. These will be made up of the “sweep up” as discussed within agenda item 4.2 of today’s meeting. Additionally the team will be looking at S.115 of the 2014 Act; Appeals: granting of leave or permission and assessment of grounds of appeal. A paper will be prepared for the committee with draft proposals. It

was noted that the Committee may wish to seek the input of the IHUG in the development of any new procedure.

7. It was noted that the SCJC's annual programme set as a priority the "commencement of a structural review for rules rewrite proper". A draft scoping paper is being prepared for the Committee's next meeting in January 2016.
8. **Kenny** went on to advise members, that the Rules Rewrite Drafting Team will be carrying out an assessment of the instruction process for the rules made to date, for example Judicial Review and Sheriff Appeal Court. This will take place over the next few months and should be able to feed back into an SCJC strategy meeting which is being planned for the beginning of next year. Exact details are still being worked up but will likely involve obtaining feedback from each committee, on what went well and what might be done differently in the future.
9. **Members of the Committee noted the information and oral update provided.**

Item 4.2 Remaining implementation of the Courts Reform (Scotland) Act 2014
[Papers 4.2 & 4.2A]

10. **Caroline Mair** spoke to these papers, providing a background to Committee members.

Section 84 & 85 - Extended Interdicts - Interdicts having effect in more than one sheriffdom.

11. **Members of the Committee discussed proposed procedure regarding Power of Arrest and agreed that in considering the terms of the legislation, there appears to be no need for further rules at this moment.**

Section 86 - Power to enable Sheriff to make orders having effect outside sheriffdom

12. **The Committee agreed the enabling powers are sufficiently wide and flexible to deal with different types of orders in different ways. Members noted the paper and agreed that in terms of the legislation, there appears to be no need for new court rules to be drafted to support this section until a specified draft order is available from the Scottish Government.**

Section 87 - Execution of Deeds relating to heritage

13. **Caroline** advised members that the Courts Reform (Scotland) Act 2014 (the 2014 Act), is silent on the application of this order, if an extract has been produced within an action. The Committee discussed the current procedure followed in both the Court of Session and sheriff courts. **Members agreed formality was required within this process and draft rules are desirable to support procedure. The Committee agreed for the Rules Rewrite Drafting Team to produce draft rules at the Committees next meeting in January for consideration.**

Section 88 - Interim Orders

14. **Members of the Committee noted the paper and agreed that in consideration of the legislation, no change or new rules are required to implement this section in the meantime.**

Sections 100 & 101- Vexatious litigation orders

15. **Following discussion the committee agreed it would be desirable to ensure clear rules are in place regarding these sections of the Act. The Committee Members agreed Rules Rewrite Drafting Team to produce draft rules for consideration, at the next Committee meeting.**

Section 102- Orders in relation to vexatious behaviour

16. **Committee members noted this section requires Regulations to be made by the Scottish Ministers and it will not be clear whether new rules will be required until draft Regulations are available.**
17. **Members of the Committee noted the overview of all the aforementioned sections.**

Item 5: Proposals for rules

Item 5.1 Lodging of electronic documents in the Inner House [Papers 5.1, 5.1A & 5.1B]

Item 5.2 Leave to appeal regarding decisions to sist [Paper 5.2, 5.2A & 5.2B]

18. **Inez Manson** spoke to these papers, providing a background of the recommendations put forward to the RRC by the Inner House User Group (IHUG).
19. **Members of the Committee considered the draft rules and indicated they were content for the draft instrument which covers both items, be submitted to SCJC for consideration at its January 2016 meeting.**

Item 6: AOCB

No other business raised.

Item 7: Future Business

Item 7.1 Date of next meetings

- Tuesday 19 January 2016
- Tuesday 29 March 2016
- Tuesday 31 May 2016
- Tuesday 12 July 2016
- Tuesday 25 October 2016