

**Item 3.2: RULES REWRITE WORKING GROUP REMIT AND MEMBERSHIP****Purpose**

1. To seek members' approval of a revised remit for the Rules Rewrite Working Group, agree to it being renamed the 'Rules Rewrite Committee' and to consider the extension of its membership.

**Background**

2. The RRWG's current remit is 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.
3. There are several sets of rules required for implementation of the Courts Reform (Sc) Bill which do not fall to be considered by any particular SCJC committee. The SCJC has requested that proposals in this regard and for the extension of the RRWG's membership be prepared for consideration at its next meeting.

**Discussion**

4. It is proposed that once the RRWG has prepared its final report (which will fulfill much of its current remit) that its remit should be revised to include the preparation of rules which do not otherwise fall within any other committee's remit. In particular: the rules for the Sheriff Appeal Court, a general model of case management, judicial review and ordinary proceedings in the sheriff court

and the Court of Session, including the abolition of the distinction between ordinary and petition procedure in the Court of Session.

5. There was some discussion at the last RRWG meeting as to the Group's role in relation to ensuring the coherency and consistency of the new suites of rules. In light of this and the view expressed at the last SCJC meeting that work to develop a process for reviewing the new rules should be developed in early course, it is further proposed that the Group should be tasked with developing a framework to enable the regular review of new rules.

*Proposed remit*

6. It is proposed that the Group should be renamed the 'Rules Rewrite Committee' to better reflect its continuing role but that it should remain temporary in light of the fact that it has been established to deliver a specific project (albeit a long term one). It is suggested that the role and remit should be reviewed after a period of 2 years.
7. A revised remit is proposed as follows.
  - 1) The Committee is to develop a statement of principle and purpose in the rules of the sheriff court and the Court of Session and prepare rules to address the following matters:
    - a. the creation of a Sheriff Appeal Court,
    - b. the introduction of summary sheriffs and Appeal Sheriffs,
    - c. reform of judicial review proceedings, and
    - d. a general model of case management.

The Committee will also consider any proposals for rules which do not otherwise fall within the remit of any other SCJC committee.

- 2) The Committee is to develop a framework for reviewing the new suites of rules prepared under the Rules Rewrite Project.
- 3) The Committee will, in due course, review ordinary proceedings in the Court of Session and the sheriff court and consider rules for the abolition of the distinction between ordinary and petition procedure in the Court of Session).
- 4) Each year, the Committee is to develop a rules rewrite programme to enable specific phases of rules to be prioritised and review the arrangements for instructing and drafting rules.

- 5) The Committee will make recommendations to the Scottish Civil Justice Council as to the policy which should be adopted and where appropriate will promulgate draft rules for their consideration.
- 6) The Committee will have particular regard to the proposals in the Courts Reform (Sc) Bill, the recommendations of the Scottish Civil Courts Review and the recommendations of the Review of the Expenses and Funding of Civil Litigation in Scotland.

#### *Membership*

8. The SCJC is asked to consider extending the membership of the group in light of the proposed revised remit.
9. The current membership is as follows:

The Rt. Hon. Lord Gill, Lord President	Chair
The Rt. Hon. Lord Menzies	Deputy Chair, SCJC member
The Hon. Lady Wolffe	Judicial member
Sheriff Principal CAL Scott QC	Sheriff Principal of Glasgow and Strathkelvin
Andrew Stewart QC	Advocate, SCJC member
Kenneth Forrest	Advocate, SCJC member
Duncan Murray	Solicitor, SCJC member
Prof. Frances Wasoff	University of Edinburgh, SCJC member
Jonathan Brown	Office of the Scottish Parliamentary Counsel, Scottish Government

10. It is suggested that at a minimum, the Scottish Government and the SCS should be invited to field representatives.

#### **Recommendation**

11. **Members are invited to:**
  - a. **rename the RRWG the Rules Rewrite Committee;**
  - b. **approve the proposed remit as outlined at para. 7;**
  - c. **agree that the role and remit should be reviewed after a period of 2 years;**  
**and**

d. give views as to any extension of the group's membership.

SCJC Secretariat

April 2014