

ITEM 5.5: POLICY NOTES

Purpose

1. To ask members to consider the approach to take in respect of policy notes to accompany rules.

Background

2. Members will recall that this matter was considered previously at the SCJC meeting of 18 November 2013. At their meeting on 18 November, the SCJC felt that the provision of policy notes with civil procedure rules, where appropriate, would be a positive step. While minded to adopt the practice of accompanying policy notes, it was agreed that the Criminal Courts Rules Council's attention should be drawn to the matter before taking a final decision. The matter was accordingly referred to the Criminal Courts Rules Council (CCRC) in light of the potential implications for criminal procedure rules. Background can be found in the previous discussion paper provided at Paper 5.5A.

Discussion

3. The CCRC discussed the use of policy notes at its 2 June meeting. The extract from the draft minutes of that meeting is as follows:

15. *The Council considered a paper prepared by the Private Office discussing the different types of document (explanatory and policy notes) which may accompany subordinate legislation. Explanatory notes were already routinely produced but the purpose of these was limited to a brief explanation of the change being made, rather than to any explanation of the reason for that change. Members considered that policy notes could in some cases be used to clarify the intention behind rule changes. However, Members were eager to express caution in the style, content and use of policy notes, agreeing that they should only be prepared where appropriate.*

4. Members are invited to consider the approach to adopt. The Parliamentary clerks have indicated that the provision of policy notes might be a helpful aid to the scrutiny of new legislation.
5. Should the Council be minded to adopt the case-by-case approach we would propose to provide policy notes for draft civil procedure rules **where it is thought appropriate to do so**. We note that the Scottish Ministers do not produce them in all cases. The principal exception applied by the Ministers which would also be applicable to the Court is where the changes are so minor that there is nothing which cannot be said in the explanatory note. An example might be draft civil procedure rules which are designed purely to correct technical errors in an earlier act of sederunt: there would be no new policy, simply a technical exercise to ensure that the original policy was correctly achieved. The other (rare) exception which might also be applicable to the Court

is cases of extreme urgency, in which there would simply be no time to produce a policy note.

Recommendation

- 6. Members are asked to consider the approach to take in respect of policy notes to accompany rules.**

SCJC Secretariat
June 2014