



Scottish  
Civil Justice  
Council

**Final Report on the *'Making Justice Work 1'*  
Rules Rewrite Project**

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## INTRODUCTION

1. The Interim Report of the Rules Rewrite Working Group's (RRWG) of the Scottish Civil Justice Council (SCJC) was published on 28 March 2014. The Report delivered on the Group's remit to consider the objective of the rules, review the approaches undertaken in other jurisdictions and develop a rules rewrite programme, with consideration to be given to the style guide and instructing process thereafter.
2. At its meeting of 30 June 2014, the SCJC approved the process for instructing new rules and a style guide, both of which were prepared under the auspices of the RRWG. At that meeting, the SCJC agreed that the RRWG should be renamed the Rules Rewrite Committee (RRC) and that its remit and membership should be extended. These are detailed at **Annex A**. The first meeting of the group sitting as the RRWC was on 20 November 2014, at which the terms of this Report were considered and approved.
3. The RRWG was established to develop and submit to the SCJC a "rules rewrite methodology" for the Rules Rewrite Project to frame the rules required to implement the recommendations of the Scottish Civil Courts Review (SCCR) and the Courts Reform (Scotland) Bill ("the Bill") and to consider the prioritisation of separate phases of the rules revisions. The project is being carried out under the Scottish Government's *Making Justice Work* Programme. Details of its remit and membership are provided at **Annex B**.
4. This Final Report sets out in detail how the new rules should be drafted, including how the aims of modernisation and simplicity of the rules might best be achieved.

### *The Rules Rewrite Project*

5. The current rules of court have arisen on a piecemeal basis over several decades, and in some cases centuries. They reflect the multiple outcomes of having separate rule making bodies with differing priorities operating over differing timelines. As a consequence there is a level of duplication and specialisation of rules which adds unnecessary layers of complexity. The Rules Rewrite Project has been commenced to make those rules more accessible to all court users through a process of consolidation, harmonisation and simplification and to support the once in a generation reform to the civil justice system as proposed in the SCCR.

6. It was agreed at the SCJC meeting of 30 June 2014 that a Final Report should be prepared once the parliamentary passage of the Courts Reform (Sc) Bill had concluded. The Bill was passed by the Scottish Parliament on 7 October 2014 and has now been enacted as the Courts Reform (Sc) Act 2014.

#### *Acknowledgements*

7. In addition to the range of individuals who contributed to the RRWG's consideration in preparing the earlier report, we would like to thank the following:

- The Office of the Scottish Parliamentary Counsel for sharing with us the benefit of its expertise on the drafting of primary legislation and for its continuing assistance with the Rules Rewrite Project through the Rules Rewrite Committee.
- The Scottish Government Legal Directorate, for sharing with us its valuable knowledge and experience in drafting subordinate legislation.
- All the individuals, including officials from the Office of the Scottish Parliamentary Counsel, Lord President's Private Office, Scottish Government and the Scottish Parliament, who contributed to the delivery of a seminar on Drafting and the Legislative Process for SCJC members in June 2014.

## THE RULES REWRITE WORKING GROUP'S INTERIM REPORT

8. The Courts Reform (Sc) Bill was passed by the Scottish Parliament on 7 October 2014 and received Royal Assent on 10 November 2014. Consideration has been given to the recommendations made in the RRWG's Interim Report in light of the final provisions of the Courts Reform (Sc) Act 2014. Particular regard has been given as to the sufficiency of the Court of Session's rule-making powers to implement the reforms contained in the Act and proposed in the Scottish Civil Courts Review through rules.

9. Key recommendations made in the Interim Report are as follows.

- Separate rules for the sheriff court and the Court of Session should be retained. However, with the exception of the simple procedure, the rules should be identical in procedure and wording where appropriate.
- There should be a statement of principle and purpose in both the sheriff court and Court of Session rules, but it should not override the other rules of court.
- The management of litigation should transfer to the courts and judges and the judicial system should take a proactive stance in managing the progression of cases through the courts.
- A review of individual suites of new rules, around 18-24 months after their entry into force, should be built into the annual rules programme.
- Subject to parliamentary consideration of the Courts Reform (Scotland) Bill, the following areas for rules should be taken forward as a priority :
  - increase to the privative limit ('exclusive competence') of the sheriff court
  - new judicial offices of summary sheriff and Appeal Sheriff
  - creation of a Sheriff Appeal Court
  - creation of a specialist personal injury court, with civil jury trials
  - simple procedure
  - judicial case management
  - rules for enforcement / sanctions to ensure adherence to the rules
  - creation of compulsory pre-action protocols
  - amendments to judicial review

10. A full summary of the recommendations is at **Annex C**.

## *Consideration of Courts Reform (Sc) Bill*

11. The Courts Reform (Sc) Bill was subject to several amendments during its parliamentary passage. The SCJC has followed the parliamentary proceedings closely, in particular as to the sufficiency of the Court of Session's rule-making powers. The following changes to the Bill as introduced were of particular relevance to the SCJC and the Rules Rewrite Project.

- a) Provision is now included in order that the Interpretation and Legislative Reform (Scotland) Act 2010 will apply to Court of Session rules in the same way as it does to the rules to be made for the sheriff court and Sheriff Appeal Court.
- b) The SCJC's functions in relation to the preparation of draft fees rules have been clarified.<sup>1</sup>
- c) Provision is included enabling the Court of Session to make rules to assist in determining whether individual proceedings fall into definition of simple proceedings (to preserve any necessary case law applicable in summary cause proceedings).
- d) Amendments were made in order that the simple procedure rules may be exercised so the court may "facilitate negotiation" between instead of "negotiating with" parties as previously provided for.
- e) Changes were made to the provisions for remit of cases to the Court of Session to provide for a single test for remit.
- f) The exclusive competence of the sheriff court will be £100,000.
- g) Amendments were introduced to provide that actions under £5,000 brought in the specialist personal injury court would not be subject to simple procedure (if a s.41(1) order allows cases under £5,000 to be heard in that

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<sup>1</sup> At para. 5 of Schedule 5 to the Act. During the passage of the Bill it was considered that there was a question as to whether the SCJC's statutory functions extend to the preparation of fees instruments. The SCJC took the view that primary legislation would be desirable, if not necessary, to give full effect to Recommendation 14 and submitted written evidence to the Scottish Parliament's Justice Committee to that effect during Stage 1 proceedings and provision was included in the Bill in this regard by way of amendment at Stage 2 proceedings.

court) and for the transfer of such cases into the simple procedure in a local court.

- h) Sheriff Principal Taylor's proposal for the test for sanction for counsel in the sheriff court<sup>2</sup> is now provided for in statute.

**12. It is not considered necessary to revisit the recommendations made in the RRWG Interim Report in light of the amendments to the Courts Reform (Sc) Bill during its parliamentary passage.**

*Sheriff Principal Taylor's Review of the Expenses and Funding of Civil Litigation*

- 13. The SCJC will require to consider Sheriff Principal Taylor's Review of the Expenses and Funding of Civil Litigation and how any implementation of his recommendations will interact with the procedural reforms currently being taken forward through the Rules Rewrite Project. Sheriff Principal Taylor's report is currently being considered by the SCJC's Costs and Funding Committee and it is expected to report to the SCJC in January 2015.

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<sup>2</sup> Recommendations 17 and 18 of Sheriff Principal Taylor's Report.

## RULES REWRITE STYLE GUIDE

14. A specialist drafting team, made up of government lawyers, has been established within the Lord President's Private Office (LPPO). The rules to be drafted under the Rules Rewrite Project will be drafted by these lawyers, while the more routine updating of the rules in response to legislation or developments in case law (the "care and maintenance" aspect of the rules) will be drafted by the lawyers in LPPO.

15. Rules drafted under the Rules Rewrite Project will be drafted in accordance with the Style Guide that has been prepared.

16. The recommendations made in the RRWG's Interim Report which were of most relevance in the development of the Style Guide are Recommendations 1, 2 and 3, summarised as follows:

***Recommendation 1:*** We are of the view that separate rules for the sheriff court and the Court of Session should be retained. However, we consider that harmonisation of procedures should be pursued (and we note that this is one of the guiding principles to which the SCJC is required to have regard when carrying out its functions). With the exception of the simple procedure, which is to be designed with party litigants in mind and should retain a distinct and special nature, 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.

### **Simplicity, modernisation and accessibility of the rules**

***Recommendation 2:*** We endorse the approach adopted in England and Wales in relation to clarifying ambiguous language. We do not, however, recommend carrying out a specific exercise to identify any such ambiguities, rather that these should be addressed as rules are rewritten. Where judicial authority has brought a benefit, although out of date language has been used, then it may be beneficial to retain that language. We think that the question of whether an individual rule should be replicated in the new rules will require to be considered on a case by case basis; and the approach should only be adopted where it is considered necessary. However, we consider that out of date or complex language should not be restated in the simple procedure rules on this basis as party litigants should not be expected to rely on case law.



## Party litigants

*Recommendation 3:* As party litigants will be regular users of the simple procedure (which will replace small claims and summary cause procedure) proposed in the Courts Reform (Scotland) Bill 2014, we consider that it is vital that simple procedure is designed with party litigants in mind. As such, it ideally should not require complementary guidance (and indeed we suggest that the procedure itself could be drafted in such a way that it ‘guides’ litigants step-by-step through the court process).<sup>3</sup>

17. The Style Guide provides drafters with high level guidance on the style, language and structure which should be adopted in drafting so as to encourage consistency of approach across the new rules. It is expected that each drafter will have careful regard to the guidance when drafting each set of rules.

18. However, the guide is not designed to be overly prescriptive and it is accepted that some deviation from the guidance may be necessary in light of the demands of the particular rule context. In any case where the guidance is materially deviated from, the rule drafter should be clear in his or her mind why the deviation is justified.

19. The Style Guide addresses the following matters:

- The drafter should also have at the forefront of his or her mind the guiding principles of the SCJC.
- Provisions should, where practicable, follow a chronological sequence of events.
- All essential information should be included in the rules so that it is available in a single place to ensure the system is accessible to all users.
- The drafter should use Latin words only where there is no suitable translation or another good reason for preferring them. If Latin is necessary, it may be helpful to the user to provide a definition within the rules.
- The rules should be drafted so as to enable the use of technology.

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<sup>3</sup> RRWG Interim Report (para, 63, p 16)

## *Applying the Style Guide*

20. In the main, care and maintenance changes to the rules involve small amendments within the framework of existing rules. It is not considered appropriate, proportionate, or user friendly to fundamentally rewrite such sections of the rules when making such amendments to the rules. These amendments will therefore tend to be made in the style of the existing rules. However, consideration will be given to the extent to which the new approach can be applied where this is appropriate. For example, where legislative change will necessitate a large scale revision of a discrete suite of rules, it may be appropriate to take the opportunity to rewrite the Chapter in line with the new style guide.

21. LPPO has recently revised its internal quality control process for draft instruments. Drafters are supported throughout the drafting process by a colleague with whom issues of concern may be raised. That colleague will also review drafts to see whether they deliver the intended policy. Once complete, all instruments are then reviewed by LPPO's SSI (Scottish Statutory Instrument) Advisor to ensure consistency in drafting approaches. The SSI Advisor also considers whether the draft instrument delivers the intended policy, whether it is *intra vires* and if any comments made by the Delegated Powers and Law Reform Committee of the Scottish Parliament on previous instruments have been taken into account. Finally, the draft is checked by the Head of the Rules Rewrite Drafting Team or the Legal Secretary to the Lord President, who will discuss it with the drafter.

22. It has been agreed that, except in urgent cases, this process will be carried out prior to the SCJC meeting at which the SCJC considers whether to submit the draft civil procedure rules to the Court of Session for consideration. It is thought unlikely that any urgent instruments would fall within the ambit of the Rules Rewrite project, but in any case the above process would be carried out before the Court makes the instrument.

## INSTRUCTING THE NEW RULES

23. Consideration has been given to different models which could have been adopted for instructing the Rules Rewrite Drafting team in drafting the new rules to be drafted under the Rules Rewrite Project.

24. The process for instructing primary legislation by the Scottish and UK governments is broadly as follows. A departmental policy team instructs their solicitor as to the policy proposals for legislation. These are the policy instructions. These will set out the background to any proposals, the objectives of the policy and whether there are any precedents for the preferred approach. The solicitor will then instruct the drafter (through drafting instructions, which are agreed by the policy team) in accordance with the Bill team's policy instructions. The drafting instructions outline the policy proposal, the background and existing law, and a detailed description of what is proposed. The drafter will draft provisions in accordance with the drafting instructions, to meet the overall policy intention.

25. The process for instructing secondary legislation is similar to that for instructing primary legislation but differs in one key respect: the solicitor acts as both drafter and legal adviser. The policy team provides the solicitor with policy instructions and the solicitor considers the legal implications as well as drafting the legislation.

26. The process for instructing both primary and secondary legislation is usually iterative, with policy becoming further developed as a result of questions raised by the solicitor or drafter. In addition, draft provisions may be subject to revision as policy officials give consideration as to whether they fulfill the policy intention.

### *The SCJC Instructing Process*

27. It has been decided to broadly follow the process for drafting secondary legislation, with the lawyers in the Rules Rewrite Drafting Team acting as both legal adviser and drafter.

28. As the SCJC has delegated much of the detailed work on preparation of rules to committees, consideration has been given as to how the SCJC and its committees might best instruct the drafters.

29. It would be possible for instructions to be provided at meetings but it is considered that this might not be the most time- or resource- efficient approach, especially in light of the volume of work that will be involved in implementing civil courts reform. It has therefore been agreed that the SCJC Secretariat will work with

the relevant drafter to prepare high level policy proposals for consideration at the relevant SCJC committee meeting. Detailed policy and drafting instructions will then be prepared by these officials, in accordance with the committee's decisions, for approval thereafter. It is intended that wherever possible, these instructions can be approved by correspondence following the meeting at which the overall policy is approved and that draft rules will be considered at a future meeting. Once agreed by the relevant committee, draft rules will be submitted to the SCJC for approval and onward submission to the Court of Session.

30. With the establishment of subject specific committees under the SCJC it is expected that, in some circumstances, more than one committee will have an interest in a set of draft rules being prepared. For example, any rules on sanctions developed by the Costs and Funding Committee will be of relevance to the development of compulsory pre-action protocols currently being considered by the Personal Injury Committee. To ensure that individual sets of rules are not prepared in isolation from interconnected work, the instructing process includes stages for sharing proposals with the SCJC and other committees with an interest, as appropriate.

31. The outline process for instructing rules agreed by the SCJC is provided at **Annex D**.

32. In addition, a template for covering papers to accompany proposals for new rules has been developed. This is provided at **Annex E**. The template has been prepared with a view to ensuring that all necessary considerations are taken into account prior to proposals being put forward to the SCJC or its committees for consideration. The template includes the assessment of compatibility with the SCJC's guiding principles.

## **PROGRESS TO DATE AND NEXT STEPS**

33. The Rules Rewrite Drafting Team is currently scoping out the work required to draft the suites of rules identified as priorities by the SCJC. Once commencement dates for the relevant provisions of the Courts Reform (Sc) Act 2014 are set, a Rules Rewrite Programme will be developed by the Rules Rewrite Committee setting out the timescales for the drafting of the necessary rules.

34. Work has already begun on the policy to be followed in respect of several sets of these rules and the consideration being given to each is set out below.

### **New exclusive competence of the sheriff court**

The Costs and Funding Committee gave consideration to the approach to be adopted in respect of the rules required to support the new exclusive competence of the sheriff court as prescribed in the Courts Reform (Sc) Act 2014 at its meeting of 4 December 2014.

### **The Creation of a Sheriff Appeal Court, new judicial offices of summary sheriff and Appeal Sheriff, and amendments to judicial review procedure**

Initial policy proposals in respect of these sets of rules were considered by the Rules Rewrite Committee at its meeting of 20 November 2014.

### **The creation of a specialist personal injury court, with civil jury trials, and the creation of compulsory pre-action protocols**

The Personal Injury Committee has agreed that the current Chapter 36 sheriff court Rules and Chapter 37 of the Court of Session Rules (jury trials) should be applied, with any necessary modifications, in the specialist personal injury court. Consideration is being given as to whether rules equivalent to Chapters 23 (e-motions) and Chapter 42A of the Court of Session Rules are also required. The Committee expects to consider draft rules in early 2015.

The Personal Injury Committee publicly consulted on pre-action protocols in summer 2014.<sup>4</sup> The Committee is currently considering the findings of that consultation with a view to agreeing the policy to be adopted in early 2015.

### **New Simple Procedure**

The Access to Justice Committee is currently considering policy proposals for the new simple procedure and will be taking into account exercises to simplify procedure in other jurisdictions before agreeing its approach.

### **Judicial case management**

While individual committees are giving consideration to case management in particular actions,<sup>5</sup> the Rules Rewrite Committee will be giving consideration to judicial case management generally in due course. Related to this will be the development of an overarching (but not overriding) statement of principle and purpose within the rules of the Scottish civil courts.<sup>6</sup> The Committee will be particularly interested in the development of the new simple procedure and case management within that procedure.

### **Rules for enforcement / sanctions**

The Rules Rewrite and Costs and Funding Committees will be responsible for developing, respectively, rules in respect of enforcement and sanctions to ensure adherence to the rules.<sup>7</sup>

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<sup>4</sup> Scottish Civil Justice Council, 'Information Gathering Exercise on Pre-Action Protocols – Report on Responses, November 2014, accessed on 30 December 2014, <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/information-gathering-exercise-on-pre-action-protocols---responses/information-gathering-exercise-on-pre-action-protocols--report-on-responses-for-publication.pdf?sfvrsn=2>.

<sup>5</sup> The Family Law Committee, for example, is looking at case management in family actions and is developing proposals for research in this regard.

<sup>6</sup> As recommended by the RRWG [Recommendation 5, p.36]

<sup>7</sup> While sanctions sit with the Costs and Funding Committee, the Rules Rewrite Committee will consider enforcement generally in terms of judicial case management (e.g. the question of a rule for striking out cases).

*Stakeholder events*

35. Stakeholder events are due to be held in 2015. The aim of the events is to:
- seek stakeholder input to help shape how courts reform should be evaluated;
  - gather views on issues/potential arising for the implementation of the priority suites of rules; and
  - communicate the work of the SCJC and plans for the programme of reform.
36. The outputs from these events will be fed back to the SCJC (and other relevant organisations) to assist with the further development of the rules and implementation of courts reform.

**MEMBERSHIP AND REMIT OF THE RULES REWRITE COMMITTEE***Remit*

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 and Appeal Sheriffs
- b. the introduction of summary sheriffs,
- c. reform of judicial review proceedings, and
- d. case management.

The Committee may 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*

The Rt. Hon. Lord Gill, Lord President	Chairman
The Rt. Hon. Lord Menzies	Deputy Chairman, SCJC member
The Hon. Lady Wolffe	Judicial member
Sheriff Principal CAL Scott QC	Sheriff Principal of Glasgow and Strathkelvin
Sheriff AGD Thornton	Judicial member
Andrew Stewart QC	Advocate, SCJC member
Kenneth Forrest	Advocate, SCJC member
Jacqueline Harris	Solicitor, SCJC member
Prof. Frances Wasoff	University of Edinburgh, SCJC member
Jonathan Brown	Office of the Scottish Parliamentary Counsel, Scottish Government
Kay McCorquodale	Scottish Government representative
Ian Dickson	Scottish Legal Aid Board representative
Gillian Prentice	Deputy Principal Clerk of Session, Observer
Jane MacDonald	Head of Policy and Legislation Branch, SCS, Observer

## MEMBERSHIP AND REMIT OF THE RULES REWRITE WORKING GROUP

1. The remit and membership of the Rules Rewrite Working Group (until September 2014) was as follows.

### *Remit*

The remit of the Working Group is, in light of a) the Report of the Scottish Civil Courts Review and b) the proposals in the draft Courts Reform (Sc) Bill, to develop and submit to the Scottish Civil Justice Council a “rules rewrite methodology”. In particular, the Working Group is to:

- a) consider the vision and objective of the new rules;
- b) 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;
- c) create a “style guide” to underpin the drafting of the new rules (there requires to be consistency in approach to rule drafting (for example, in relation to terminology and language) between the civil courts and across the different disciplines such as family and PI);
- d) agree the format and guidance for “drafting instructions” whether this be through the committee structure or the SCJC Secretariat; and
- e) develop an annual rules rewrite programme which enables specific phases of rules to be prioritised.

### *Membership*

The Rt. Hon. Lord Gill	Chairman
The Rt. Hon. Lord Menzies	Deputy Chairman, SCJC member
The Hon. Lady Wolffe	
Sheriff Principal CAL Scott QC	Sheriff Principal of Glasgow and Strathkelvin
Andrew Stewart QC	Advocate

Kenneth Forrest	Advocate
Duncan Murray	Solicitor, SCJC member
Jonathan Brown	Office of the Scottish Parliamentary Counsel, Scottish Government
Prof. Frances Wasoff	Emeritus Professor of Family Policies, Edinburgh University, SCJC member

**SUMMARY OF RECOMMENDATIONS MADE IN THE INTERIM REPORT****Uniformity v. specificity**

*Recommendation 1:* We are of the view that separate rules for the sheriff court and the Court of Session should be retained. However, we consider that harmonisation of procedures should be pursued (and we note that this is one of the guiding principles to which the SCJC is required to have regard when carrying out its functions). With the exception of the simple procedure, which is to be designed with party litigants in mind and should retain a distinct and special nature, 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.

(paragraph 53)

**Simplicity, modernisation and accessibility of the rules**

*Recommendation 2:* We endorse the approach adopted in England and Wales in relation to clarifying ambiguous language. We do not, however, recommend carrying out a specific exercise to identify any such ambiguities, rather that these should be addressed as rules are rewritten. Where judicial authority has brought a benefit, although out of date language has been used, then it may be beneficial to retain that language. We think that the question of whether an individual rule should be replicated in the new rules will require to be considered on a case by case basis; and the approach should only be adopted where it is considered necessary. However, we consider that out of date or complex language should not be restated in the simple procedure rules on this basis as party litigants should not be expected to rely on case law.

(paragraph 58)

**Party litigants**

*Recommendation 3:* As party litigants will be regular users of the simple procedure (which will replace small claims and summary cause procedure) proposed in the Courts Reform (Scotland) Bill 2014, we consider that it is vital that simple procedure is designed with party litigants in mind. As such, it ideally should not require complementary guidance (and indeed we suggest that the procedure itself could be drafted in such a way that it 'guides' litigants step-by-step through the court process).

(paragraph 63)

## Accessing the rules

**Recommendation 4:** We consider that it would be beneficial to make the rules for Scotland accessible online in similar fashion to the way that they are made available in England and Wales, with clear links to relevant documents such as practice directions and guidance.

(paragraph 64)

## Drafting rules

### *The need for an overriding objective*

**Recommendation 5:** We are of the view 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. The statement should be founded on recommendation 112 of the Scottish Civil Courts Review, and should indicate that the purpose of the rules is to provide parties with a just resolution of their dispute in accordance with their substantive rights, within a reasonable time, in a fair manner with due regard to economy, proportionality and the efficient use of the resources of the parties and of the court, and that parties are expected to comply with the rules.

(paragraph 71)

## Implementation

### *Managing Litigation*

**Recommendation 6:** We consider it essential that management of litigation transfers to the courts, and that judges and the judicial system take a proactive stance in managing the progression of cases through the courts.

(paragraph 75)

**Recommendation 7:** We consider that costs reform is a necessary complement to ensure the success of procedural reform and recommend that rules for sanctions and enforcement should be taken forward as a priority.

(paragraph 83)

### *Supporting Measures*

**Recommendation 8:** We recommend that particular consideration should be given to the following: pilots; practice directions, guidance, and tables of ‘concordance’. We recognise that there may be some value in running pilot schemes in certain circumstances but we recommend against piloting changes as part of any general approach.

(paragraph 94)

### **Consulting on draft rules**

**Recommendation 9:** We recommend that in light of the consultative nature of the SCJC, the implementation timescales and the fact that many rules changes are likely to be technical and consequential in nature, public consultation on draft rules should not be adopted as standard. It is considered that consultation with key organisations should be considered on a case by case basis.

(paragraph 99)

**Recommendation 10:** We consider that as the rules are to be prepared in phases, draft rules should be placed on the SCJC website in their draft form. This would promote the awareness of forthcoming changes to rules and would allow for any significant matters arising to be dealt with before entry into force. Wherever possible there should be at least a 3 month laying period for rules.

(paragraph 102)

### **Monitoring and evaluation**

**Recommendation 11:** We note that one of the functions of the SCJC is to keep the civil justice system under review and we consider it essential that changes to the rules are subject to regular and comprehensive review. We therefore consider that a review of individual suites of new rules, to be carried out 18-24 months after their entry into force, should be built into the annual rules programme.

(paragraph 107)

### **Priorities for reform**

**Recommendation 12:** We consider that the following suites of rules changes should be taken forward as a priority and that drafting should begin on each of them during 2014.

- Increase to the Privative Limit

- Judicial Structures (introduction of the new judicial offices of summary sheriff and Appeal Sheriff)
- Creation of a Sheriff Appeal Court
- The creation of a specialist personal injury court, with civil jury trials
- Simple procedure
- Judicial case management
- Rules for enforcement / sanctions
- The creation of compulsory pre-action protocols
- Judicial review

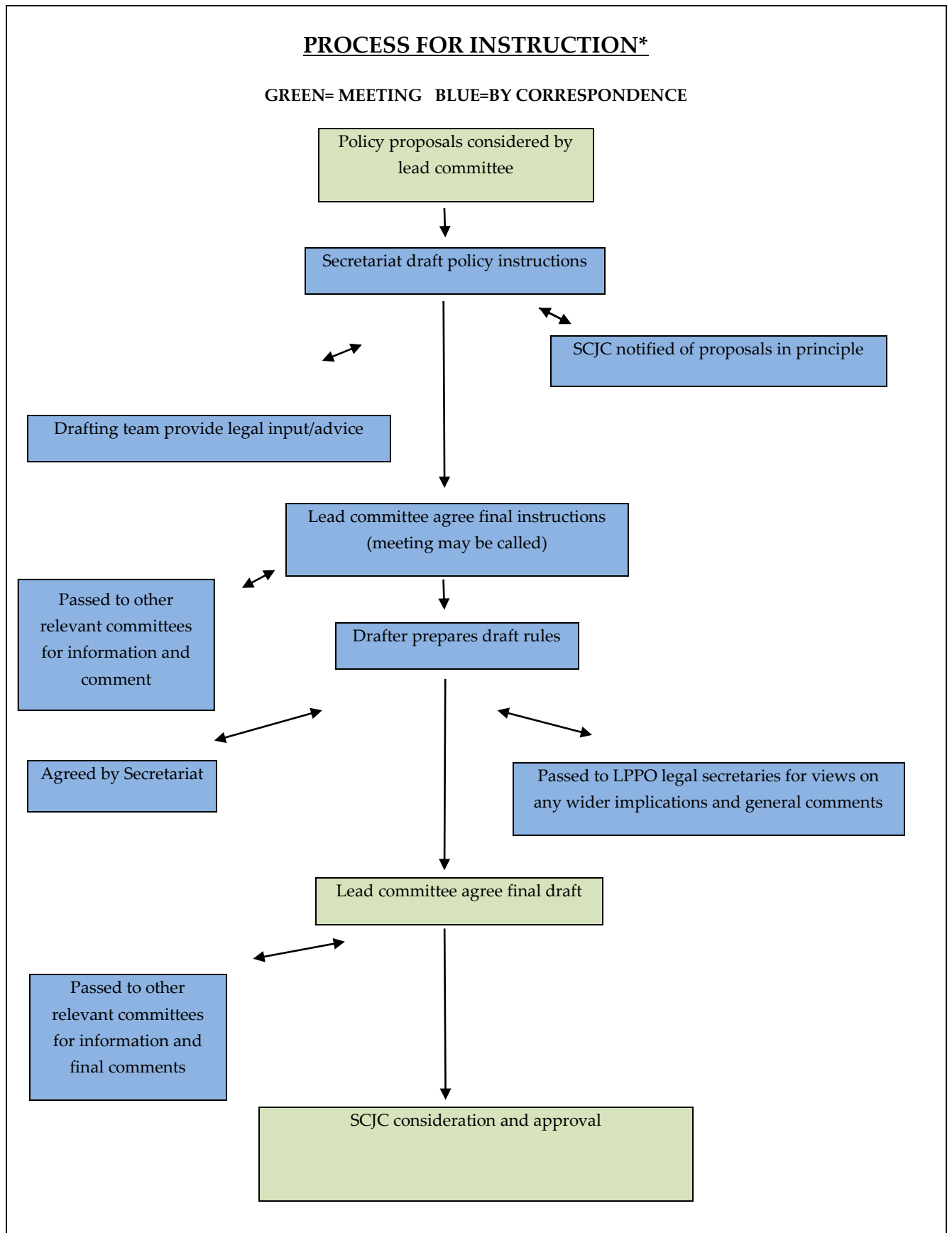
(paragraphs 111 – 126)

### **Medium term priorities for reform**

**Recommendation 13:** We consider that the following aspects of civil courts reform can be phased in once implementation of the early priorities identified above nears completion.

- Abolition of distinction between ordinary and petition procedure in the Court of Session
- Alternative Dispute Resolution
- Lay representation, party litigants and vexatious litigants
- Enhanced case management
- Facilitating settlement

(paragraphs 127 -136)



\* urgent or purely consequential or straightforward technical amendments with little or no policy implications (such as the correction of errors) may be submitted directly to the SCJC in the first instance.



## SCJC TEMPLATE PAPER FOR RULES PROPOSALS

[Brief outline of each section only, 2-3 pages max. with additional information to be provided in annexes where necessary.]

### **1 – Policy Proposal**

Brief summary of policy proposal. Relevant policy paper or original request (eg if from SG) to be provided at Annex along with draft rules, if available.

### **2 – Rationale**

Short summary of the reason for the proposal, including any alternatives considered. This could be very brief, e.g. “amendment of rule required to correct an error”, to something more descriptive.

### **3 – Timing**

Details of planned implementation timescales, including whether any aspects of the proposals are time critical.

### **4 – Compatibility with SCJC guiding principles**

Short description as to how proposal is compatible with SCJC guiding principles. Where any departures have been made (e.g. procedures differ in Court of Session and sheriff court) an explanation should be provided.

### **5 – Links to other initiatives**

Are there any links to other initiatives and work by other SCJC committees, e.g. rules rewrite, legislative proposals etc.

### **6 – Implementation**

Details of implementation plans by relevant parties, including as to timescales, practical considerations and associated implementation activity, in particular, as to training/guidance required, IT changes. SCS to be consulted in this regard.

### **7 – Consultation**

Brief outline of any other consultation which has taken place, and by whom, including public consultation and informal, targeted consultation.

### **8 – Legal advice**

Legal considerations, including as to vires.

### **9 – Issues raised during policy development stages**

Outline any significant issues raised, e.g. during consultation and committee consideration.

**[BACK PAGE]**