



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

23rd Meeting, 2015 (Session 4)

Tuesday 1 September 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 6 and 7 in private.
2. **Community Justice (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Rt Hon Dame Elish Angiolini, Commissioner on Women Offenders;

Mark Roberts, Senior Manager, Audit Scotland;

Cleland Sneddon, Executive Director, Community Services, Argyll and Bute Council, representing the Society of Local Authority Chief Executives and Senior Managers (SOLACE) Scotland.

3. **Criminal Justice (Scotland) Bill:** Christine Grahame (Convener) to move—

S4M-14094—That the Justice Committee considers the Criminal Justice (Scotland) Bill at Stage 2 in the following order: Part 2 (with schedule 2 being taken after section 61), Parts 3 to 5, Part 6 (with schedule 3 being taken after section 87), Part 1 (with schedule 1 being taken after section 52), Part 7 and the long title (with any amendment inserting a new Part before or after an existing Part being taken before or after the existing Part in accordance with this order).

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015 (SSI 2015/224);

Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/225).

5. **Subordinate legislation:** The Committee will consider the following instruments which are not subject to any parliamentary procedure—

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) (SSI 2015/227);

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228).

6. **Community Justice (Scotland) Bill:** The Committee will consider whether to invite additional witnesses to give evidence on the Bill at Stage 1.
7. **Inquiries into Deaths (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/15/23/1

Private paper

J/S4/15/23/2 (P)

[Community Justice \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 4

Paper by the clerk

J/S4/15/23/3

[Scottish Courts and Tribunals Service \(Administrative Support\) \(Specified Persons\) Order 2015 \(SSI 2015/224\)](#)

[Scottish Sentencing Council \(Procedure for Appointment of Members\) Regulations 2015 \(SSI 2015/225\)](#)

Agenda item 5

Paper by the clerk

J/S4/15/23/4

[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(No.2\) \(Personal Injury and Remits\) \(SSI 2015/227\)](#)

[Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(No.3\) \(Courts Reform \(Scotland\) Act 2014\) 2015 \(SSI 2015/228\)](#)

Agenda item 6

Private paper

J/S4/15/23/5 (P)

Agenda item 7

Private paper

J/S4/15/23/6 (P)

[Inquiries into Deaths \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

Justice Committee

23rd Meeting, 2015 (Session 4), Tuesday 1 September 2015

Community Justice (Scotland) Bill

Note by the clerk

Purpose

1. This paper provides some background information in advance of the Committee's first Stage 1 evidence session on the Community Justice (Scotland) Bill on 1 September.

The Bill

2. The Bill was introduced in the Parliament on 7 May and referred to the Justice Committee on 13 May. The Policy Memorandum states that "the purpose of the Bill is to replace the existing model for community justice services, which is based on eight regional Community Justice Authorities¹ (CJAs), with a new model".² The Bill would in particular:

- require Scottish Ministers to publish both a national strategy and a national performance framework in relation to community justice,
- create a national body, Community Justice Scotland (CJS), with responsibility for overseeing and keeping Scottish Ministers informed about performance in relation to community justice provision, promoting and supporting improvements, and promoting the national strategy.
- require CJS to publish a strategy for innovation, learning and development in relation to community justice, identify and promote good practice and commission services,
- define a set of community justice partners with responsibility for planning, delivery and monitoring of community justice services at local authority level, and
- require CJS and community justice partners to co-operate with each other in carrying out their functions in relation to community justice.

3. The Bill and accompanying documents can be found at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/88702.aspx>

4. Further background information is available in the SPICe briefing on the Bill at:

<http://www.scottish.parliament.uk/parliamentarybusiness/91595.aspx>

Committee consideration

5. The Committee issued a call for views on the Bill on 19 May, which closed on 12 August. Written submissions³ received can be accessed at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/91540.aspx>

6. The Committee will hear from Dame Elish Angiolini, Chair of the Commission on Women Offenders, Audit Scotland, and the Society of Local Authority Chief Executives on 1 September, with further evidence sessions on 15 and 22 September and 6 October.

¹ The role of CJAs is to plan, co-ordinate, monitor and report on the delivery of offender services and to produce a strategic plan for their area in consultation with statutory and non-statutory partner bodies. The membership of CJAs is restricted to elected members.

² This approach followed reports published in 2012 by the Commission on Women Offenders and by Audit Scotland highlighting concerns with the current model of community justice and subsequent Scottish Government consultations in 2012 and 2014 identifying support for a new model.

³ Packs of written submissions were issued to members on 19 August.

Justice Committee

23rd Meeting, 2013 (Session 4), Tuesday 1 September 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015 (SSI 2015/224) [see page 2];
 - Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/225) [see page 3].
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

**SCOTTISH COURTS AND TRIBUNALS SERVICE (ADMINISTRATIVE SUPPORT)
(SPECIFIED PERSONS) ORDER 2015 (SSI 2015/224)**

Introduction

3. The instrument was made under powers conferred by section 62(1)(h) of the Judiciary and Courts (Scotland) Act 2008 and all other enabling powers.
4. The purpose of the instrument is to add the Scottish Sentencing Council to the list of persons that the Scottish Courts and Tribunals Service provides, or must ensure the provision of, administrative support for under section 62 of the Judiciary and Courts (Scotland) Act 2008.
5. The instrument came into force on 27 June 2015.
6. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2015/224/contents/made>

Consultation

7. The policy note on the instrument states that the Scottish Ministers have consulted the Lord Justice General in relation to these regulations as required by the 2008 Act.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 9 June 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

9. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 September 2015.

Policy Note: Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015 (SSI 2015/224)

The above instrument was made in exercise of the powers conferred on them by section 62(1)(h) of the Judiciary and Courts (Scotland) Act 2008 (“the 2008 Act”) and all other powers enabling them to do so.

Policy Objectives

This instrument provides that the Scottish Sentencing Council (“the Council”) is added to the list of persons to which the Scottish Courts and Tribunals Service (“the SCTS”) provides, or must ensure the provision of property, services and staff.

The SCTS are an independent body corporate who provide administrative support to Scottish Courts and to the judiciary of those courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts, and to the Office of the Public Guardian and Accountant of Court.

It is considered appropriate that the SCTS provide administrative support to the Council as they already provide administrative support to judicial members, who will make up six of the twelve members of the Council.

There is also a requirement within the Criminal Justice and Licensing (Scotland) Act 2010 for the STCS to provide information on sentencing to the Council, when requested. With the STCS providing administrative support to the Council this requirement may be fulfilled with a more streamlined approach.

Consultation

The Scottish Ministers have consulted the Lord Justice General in relation to these regulations as required by the 2008 Act.

Impact Assessments

Equality Impact Assessment (EQIA) is a tool to assist in considering how policy may impact, either positively or negatively, on different sectors of the population in different ways.

We have considered the impact of policy on particular groups of people (their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by these regulations.

Criminal Justice Division
May 2015

SCOTTISH SENTENCING COUNCIL (PROCEDURE FOR APPOINTMENT OF MEMBERS) REGULATIONS 2015 (SSI 2015/225)

Introduction

10. The purpose of the instrument is to set out the procedure for the selection and nomination for appointment of members of the Scottish Sentencing Council.

11. The instrument was made under powers conferred by paragraphs 2(3) and 2(4) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) and all other enabling powers.

12. The instrument came into force on 27 June 2015.

13. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2015/225/contents/made>

Consultation

14. The policy note on the instrument states that the Scottish Ministers have consulted the Lord Justice General in relation to these regulations as required by the 2010 Act.

Delegated Powers and Law Reform Committee consideration

15. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 9 June 2015 and that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

16. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 September 2015.

Policy Note: Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/225)

The above instrument was made in exercise of the powers conferred by paragraphs 2(3) and 2(4) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) and all other powers enabling them to do so. The regulations are subject to negative procedure.

Policy Objectives

These regulations set out the procedure for the selection and nomination for appointment of judicial and legal members of the Scottish Sentencing Council (“the Council”). These members are appointed to the Council by the Lord Justice General.

Background

The 2010 Act provides that the Council will have 12 members. It will be chaired by the Lord Justice Clerk and will consist of five other judicial members, three legal members and three lay members.

It is for the Lord Justice General to appoint members of the Council other than the Lord Justice Clerk (who is a member by virtue of his office) and the lay members (who are appointed by the Scottish Ministers). A person can only be appointed by the Lord Justice General if selected or nominated in accordance with the procedure prescribed by Scottish Ministers in regulations.

Selection for appointment

The regulations make provision for the Lord Justice General to invite applications, in writing, from sheriffs, stipendiary magistrates, justices of the peace, practicing advocates and practising solicitors for selection as a member of the Council.

Applications will be considered by a panel of at least two persons. The Lord Justice General may be part of the panel and if so, will be chair. If the Lord Justice General is not part of the panel, he will choose who should chair the panel.

The panel can make a selection based on application alone. Where the panel is unable to make a selection based on an application, interviews must be conducted.

The regulations provide that a panel can select for appointment more persons than may be appointed in any given category of membership. In such a situation, the panel should inform the Lord Justice General of their order of preference, unless the Lord Justice General was a member of the panel.

The regulations require that before a person can be appointed as the advocate or solicitor member of the Council, the Lord Justice General must consult with the Dean of the Faculty of Advocates and the President of the Law Society of Scotland, respectively.

It is considered that an application and interview process provided for in the regulations will provide an open, transparent and robust process of selecting various members of the Council and ensure that members have knowledge and skills relevant to the functions of the Council.

Nomination for appointment

The regulations provide that any persons holding the office of judge who normally sit as a judge of the Outer House of the Court of Session or the High Court of Justiciary and any persons holding the office of sheriff principal may nominate themselves for selection by the Lord Justice General to be a member of the Council.

Self-nomination by these members is believed to be appropriate due to the fact that the selection pool is small and additional process would be disproportionate. It will also have the effect of ensuring flexibility for judicial deployment.

The regulations provide that the prosecutor member for appointment will be nominated by the Lord Advocate. This nomination process is considered appropriate as it will

ensure appropriate links with the Crown Office and Procurator Fiscal Service as well as ensuring that the most suitable candidate is identified.

Consultation

The Scottish Ministers have consulted the Lord Justice General in relation to these regulations as required by the 2010 Act.

Impact Assessments

Equality Impact Assessment (EQIA) is a tool to assist in considering how policy may impact, either positively or negatively, on different sectors of the population in different ways.

We have considered the impact of policy on particular groups of people (their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by these regulations.

Criminal Justice Division
May 2015

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx>

Justice Committee

23rd Meeting, 2015 (Session 4), Tuesday 1 September 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instruments which are not subject to any parliamentary procedure:

- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) (SSI 2015/227);
- Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228).

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AND SHERIFF COURT RULES AMENDMENT) (NO.2) (PERSONAL INJURY AND REMITS) (SSI 2015/227)

Introduction

2. The instrument was made under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other enabling powers.

3. The purpose of the instrument is to amend the Rules of the Court of Session 1994, the Ordinary Cause Rules 1993 and the Summary Cause Rules 2002 in respect of the transfer and remit of civil proceedings and personal injury actions. It makes provision in consequence of the coming into force of the Courts Reform (Scotland) Act 2014 and contains other amendments in relation to personal injury actions.

4. The instrument comes into force on 22 September 2015.

5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2015/227/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 23 June 2015 and agreed to draw the attention of the Parliament to it as it contains a minor drafting error. The DPLR Committee noted that the Lord President's Private Office had undertaken to lay an amending instrument to correct this error.

7. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 2 of this paper.

Justice Committee consideration

8. The instrument was laid on 4 June 2015 and the Justice Committee has been designated as lead committee.

Procedure

9. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

10. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

11. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

12. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 43rd Report 2015

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) (SSI 2015/227) (Justice)

1. This instrument amends the Rules of the Court of Session 1994, the Ordinary Cause Rules 1993 and the Summary Cause Rules 2002, in respect of the technical rules for the transfer and remit of civil proceedings and personal injury actions (cases). These amendments to the Court Rules are in consequence of the coming into force of the Courts Reform (Scotland) Act 2014, as well as other amendments to the procedures for personal injury actions. Several of the amendments are a consequence of the establishment of the Sheriff Personal Injury Court in accordance with the 2014 Act (otherwise called the "all-Scotland sheriff court").

2. In particular, the Ordinary Cause Rules of the Sheriff Court are amended to add new Chapters on motions intimated and lodged by email (Chapter 15A), on case management procedures for personal injury actions (Chapter 36A) and jury trials in the new Sheriff Personal Injury Court (Chapter 36B).

3. The Act of Sederunt is laid, but not subject to further procedure. It comes into force on 22 September 2015. This is the date when various provisions of the 2014 Act are brought into force by the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015.

4. In considering the instrument, the Committee asked the Lord President's Private Office about Rule 15A.2 which had been duplicated. The correspondence is reproduced at Annexe A.

5. The Lord President's Private Office has acknowledged in the correspondence that there is a minor drafting error in the instrument, as explained in the following paragraph.

6. The Committee draws the attention of the Parliament to the instrument on the general reporting ground, as it contains a minor drafting error. Paragraph 8(5) inserts a new Chapter 15A of the Rules of the Court of Session 1994 (motions intimated and lodged by email). There are two paragraphs (2) of Rule 15A.

7. The Committee notes that the Lord President's Private Office has undertaken to lay an amending instrument to correct this error, and errors identified in the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228).

**ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AMENDMENT)
(NO. 3) (COURTS REFORM (SCOTLAND) ACT 2014) 2015 (SSI 2015/228)**

Introduction

13. The instrument was made under powers conferred by sections 39(7) and 103(1) of the Courts Reform (Scotland) Act 2014(b), and all other enabling powers.

14. The purpose of the instrument is to amend the Rules of the Court of Session 1994 in consequence of the coming into force of certain parts of the Courts Reform (Scotland) Act 2014.

15. The instrument comes into force on 22 September 2015.

16. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2015/228/contents/made>

Delegated Powers and Law Reform Committee consideration

17. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 23 June 2015 and agreed to draw the attention of the Parliament to it as it contains a couple of minor drafting errors. The DPLR Committee noted that the Lord President's Private Office had undertaken to lay an amending instrument to correct these errors.

18. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 4 of this paper.

Justice Committee consideration

19. The instrument was laid on 4 June 2015 and the Justice Committee has been designated as lead committee.

Procedure

20. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

21. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

22. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

23. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 43rd Report 2015

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228) (Justice)

1. This instrument amends the Rules of the Court of Session 1994, the Ordinary Cause Rules 1993 and the Summary Cause Rules 2002, in respect of the technical rules for the transfer and remit of civil proceedings and personal injury actions (cases). These amendments to the Court Rules are in consequence of the coming into force of the Courts Reform (Scotland) Act 2014, as well as other amendments to the procedures for personal injury actions. Several of the amendments are a consequence of the establishment of the Sheriff Personal Injury Court in accordance with the 2014 Act (otherwise called the "all-Scotland sheriff court").

2. In particular, the Ordinary Cause Rules of the Sheriff Court are amended to add new Chapters on motions intimated and lodged by email (Chapter 15A), on case management procedures for personal injury actions (Chapter 36A) and jury trials in the new Sheriff Personal Injury Court (Chapter 36B).

3. The Act of Sederunt is laid, but not subject to further procedure. It comes into force on 22 September 2015. This is the date when various provisions of the 2014 Act are brought into force by the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015.

4. In considering the instrument, the Committee asked the Lord President's Private Office about Rule 15A.2 which had been duplicated. The correspondence is reproduced at Annexe B.

5. The Lord President's Private Office has acknowledged in the correspondence that there is a minor drafting error in the instrument, as explained in the following paragraph.

6. The Committee draws the attention of the Parliament to the instrument on the general reporting ground, as it contains a minor drafting error. Paragraph 8(5) inserts a new Chapter 15A of the Rules of the Court of Session 1994 (motions intimated and lodged by email). There are two paragraphs (2) of Rule 15A.

7. The Committee notes that the Lord President's Private Office has undertaken to lay an amending instrument to correct this error, and errors identified in the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228).

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015 (SSI 2015/227)

On 9 June 2015, the Lord President's Private Office was asked:

In relation to the inserted Chapter 15A of the Rules of the Court of Session 1994 (on pages 12 and 13), there is an error as the new Rule 15A.2 is duplicated (and which affects the numbering of the remaining paragraphs, 15A.3 to 12). Would corrective action be proposed?

The Lord President's Private Office responded as follows:

We are grateful to the committee and its legal advisors for identifying that the new Rule 15A.2 is duplicated and for bringing the matter to our attention. We agree that this is an error and a corrective instrument will be prepared at the earliest opportunity.

ANNEXE B

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228)

On 10 June 2015, the Lord President's Private Office was asked:

1. In the new Rule 58.15 of the Rules of the Court of Session 1994 (inserted by paragraph 3(3) of the instrument, on page 8)), there appears to be an error in the numbering of the paragraphs of the Rule, as (4) and (5) follow (1). Are any paragraphs omitted, and would corrective action be proposed?

2. Paragraph 3(5) of the instrument provides that in the Appendix to the Rules of the Court of Session, the Forms in Schedule 1 to the instrument are substituted for Forms 58.6 and 58.8A.

(a) Would you agree there is an error, as Schedule 1 contains 3 Forms- the Form of Petition for Judicial Review, the Form of Request for Review and the Form of Minute of Intervention? Would corrective action be proposed?

(b) Supplemental to that, is it agreed that "Form 58.6" is omitted before "Form of Petition for Judicial Review" in the Schedule; that there appears to be an error as paragraph 3(5) substitutes Form 58.8A, but the Schedule refers to Form 58.8 as the Form of Request for Review; and that paragraph 3(5) omits reference to the fact that the Form of Minute of Intervention has become Form 58.18 by virtue of the instrument?

The Lord President's Private Office responded as follows:

1. In the new Rule 58.15 of the Rules of the Court of Session 1994 there are no paragraphs omitted and we agree that there is an error in the numbering of the paragraphs of the Rule. We are grateful to the committee and its legal advisers for drawing this to our attention. This error will be corrected at the earliest opportunity.

2. We are grateful to the committee and its legal advisers for drawing to our attention the missing heading on Form 58.3 (Form of Petition for Judicial Review). This error will be corrected at the earliest opportunity.

We do not agree that the manner in which the forms have been substituted is in error. The existing chapter 58 requires only two forms. As forms in the Rules of the Court of Session take their numbering from the rule which introduces them, these are numbered 58.6 and 58.8A. The replacement chapter 58, introduced by this instrument, requires three forms. Because the rules have been restructured, these three forms take different numbers: 58.3 (Form of Petition for Judicial Review), 58.8 (Form of Request for Review), and 58.18 (Form of Minute of Intervention). There is no requirement in the Schedule containing the forms for the numbering to run serially (for example, the Form immediately before current Form 58.6 is numbered 53.2), as long as it runs in numerical order and the convention that the Forms take their number from the relevant rule is maintained.

We understand the effect of textual amendment by substitution to be the omission of the substituted parts of the instrument for the new, replacement parts of the instrument. We do not understand there to be a requirement that the structure or

numbering of the provision being substituted should be the same as the newly inserted provision. It is competent to substitute multiple sections for a single section (for an example from primary legislation see section 117 of the Courts Reform (Scotland) Act 2014, which replaces existing section 40 of the Court of Session Act 1988 with two new sections, 40 and 40A).

If the restructuring of a chapter of Court of Session Rules requires (as it often will) a change in the number or numbering of forms, it is inevitable that the substitution will involve more than exactly substituting like for like. This technique is the standard way of achieving this effect when amending court rules: for example, in S.S.I. 2011/303, which substituted a new Chapter 41 of the Rules of the Court of Session. Paragraph 3(d) of that instrument substitutes the six forms in the Schedule for five existing, differently numbered forms.

The textual amendment in paragraph 3(5), in our view, correctly identifies the provision to be replaced, and the replacement provision, and locates that replacement in the correct place in the amended instrument.

We intend to lay an instrument correcting the errors identified above and the error identified in S.S.I. 2015/227 at the earliest opportunity, to come into force by 22nd September 2015.