



**Scottish  
Civil Justice  
Council**

**Annual Report 2016/17  
and  
Annual Programme 2017/18**

**[www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)**

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## Foreword



It is a pleasure to introduce the Scottish Civil Justice Council's fourth Annual Report, covering the year to 31 March 2017. This year, the Council's Annual Report and Annual Programme of Work for 2017-18 have been published together.

During the year, the Council has continued to support the wider programme of civil courts reform in Scotland. This important work will continue to be its focus for the year ahead. The drafting of court rules required to support implementation of the Courts Reform (Scotland) Act 2014 is almost complete. Rules are now in force in relation to the 'core' Simple Procedure, lay representation for non-natural persons and vexatious litigation orders. The Council has now begun its extensive Rules Rewrite Project which is designed to consolidate, harmonise and simplify the rules of the civil courts in Scotland.

One of the most significant achievements of the year has been the publication of The New Civil Procedure Rules First Report, which sets out the thinking of the Council on a number of important and over-arching matters relating to the rewrite of civil procedure rules. The Council is keen to engage with court users to ensure the success of this far-reaching project. The first step is a summer tour with visits planned to all of the six court areas in Scotland.

Over the year, 18 sets of draft rules have been prepared and made into law by the Court of Session. A number of those cover more than one subject area. Significant developments have included rules arising from the implementation of the reforms to bankruptcy proceedings and from the new Fatal Accident Inquiry procedure. The Council has also developed rules to introduce whole new procedures, including the creation of a new system of pursuers' offers and a new personal injury pre-action protocol.

None of this work could have been achieved without the high level of commitment and professionalism from the members of the Council and its Committees. I am grateful to them and the associated secretariat staff for their support.

**Lord President, Chairman of the Scottish Civil Justice Council**

## Introduction

### The Scottish Civil Justice Council

The Scottish Civil Justice Council (the Council) was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, replacing the [Court of Session Rules Council](#) and the [Sheriff Court Rules Council](#). It is responsible for preparing draft rules of procedure for the Court of Session and for civil proceedings in the sheriff court. It also has the function of providing advice and making recommendations to the Lord President on the development of the civil justice system in Scotland.

### Functions and powers

During 2015-16, the Council's functions were extended. The Courts Reform (Scotland) Act 2014 extended its functions to include the preparation and submission of draft rules of procedure for civil proceedings in the Sheriff Appeal Court and 'draft fees rules'. The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 further extended its functions by conferring a responsibility on the Council for the review of practice and procedure followed in Inquiries under the 2016 Act and this includes the drafting of inquiry procedure rules.

The Council's key functions are:

- keeping the civil justice system under review;
- reviewing the practice and procedure followed in the Court of Session and in civil proceedings in the Sheriff Appeal Court and the sheriff court;
- reviewing the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016;
- preparing and submitting to the Court of Session draft civil procedure rules, draft fees rules and draft inquiry procedure rules and
- advising and making recommendations on the development of and changes to the civil justice system in Scotland.

### Guiding principles

Under section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, the Council must have regard to the following principles when carrying out its functions:

- the civil justice system should be fair, accessible and efficient;
- rules relating to practice and procedure should be as clear and easy to understand as possible;
- practice and procedure should, where appropriate, be similar in all civil courts, and
- methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.

In order to ensure that these statutory guiding principles are built into the work of the Council, an assessment of compatibility with each of the principles is carried out every time the Council considers new rules proposals.

In addition, these principles are incorporated into the individual remits of each council committee to ensure all committees have regard to them when formulating rules proposals.

## Who we are

The Council's membership encompasses a range of interests and experiences across the civil justice system. As well as the judiciary and practitioners, the Council includes consumer representatives, an employment judge and a solicitor with arbitration experience. In addition, the chief executives of the Scottish Courts and Tribunals Service and the Scottish Legal Aid Board and a member of staff of the Scottish Government all hold standing appointments.

The current members of the Council are:

The Right Hon. Lord Carloway	Lord President and Lord Justice General, Chairman
Eric McQueen	Chief Executive, Scottish Courts and Tribunal Service
Colin Lancaster	Chief Executive, Scottish Legal Aid Board
Jan Marshall	Scottish Ministers' appointee
The Right Hon. Lord Menzies	Judicial member, Deputy Chair
The Hon. Lord Tyre	Judicial member
The Right Hon. Lord Boyd of Duncansby	Judicial member
Sheriff Principal Abercrombie QC	Judicial member
Sheriff Hughes	Judicial member
Sheriff Murphy QC	Judicial member
Lynda Brabender	Advocate member
Kenneth Campbell QC	Advocate member
Paul Reid	Solicitor member
Jacqueline Harris	Solicitor member
Joel Conn	Solicitor member
Ian Maxwell	Consumer representative member
Jane Williams	Consumer representative member
Employment Judge Joseph d'Inverno	Lord President member
Brandon Malone	Lord President member

The Council has nominated a number of observers to attend council and committee meetings in order to assist in the carrying out of its functions. In addition to council members, the following observers attend council meetings:

Craig McCorkindale	Making Justice Work 1 Programme Manager
Jane MacDonald	Legislation Implementation Team, Scottish Courts and Tribunals Service
Yvonne Anderson	Acting Deputy Principal Clerk of Session, Scottish Courts and Tribunals Service

## Committees

The Council has established the following committees to assist it in carrying out its work:

Access to Justice Committee	Chair: The Hon. Lady Wise
Costs and Funding Committee	Chair: The Hon. Lord Burns
Family Law Committee	Chair: The Hon. Lord Brailsford
Information and Communications Technology Committee	Chair: The Hon. Lord Tyre
Personal Injury Committee	Chair: The Hon. Lord Armstrong
Rules Rewrite Committee	Chair: The Rt. Hon. Lord Carloway, Lord President
	Deputy Chair: The Right Hon. Lord Menzies

## Support

Secretariat support for the Council is provided by the Scottish Courts and Tribunals Service (the SCTS). The Secretariat consists of:

Secretary	Roddy Flinn
Deputy Secretary	Mandy Williams
Business and Policy Manager	Karen Stewart
Policy Officers	Andrea Campbell
	Lauren Gibb
	David Ross

Legal support is provided by the Lord President's Private Office, which is staffed by government lawyers. A specialist drafting team, again made up of government lawyers, has been created to carry out the rules revisions under the Rules Rewrite Project.

## Annual Report 2016/17

### Key Achievements

In its Annual Programme for 2016-17, the Council indicated that it would give particular focus to the following matters during the year:

- continued implementation of major justice system reform projects;
- consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules (this is the 'care and maintenance' element of the rules) and
- consideration of potential improvements to procedures which can be taken forward without primary legislation.

### (a) Justice System Reform

There were four major initiatives identified as having direct impact on the work of the Council of the last year and work progressed as follows:

#### *Civil Courts Reform*

Since its creation, the work of the Council has primarily been focused on the implementation of civil courts reform as proposed by Lord Gill's Report of the Scottish Civil Courts Review (the Gill Review) and the Courts Reform (Scotland) Act 2014 (the 2014 Act). Delivery of this major reform programme requires many new suites of court rules which the Council has been responsible for drafting. As well as drafting the rules required to support implementation of the provisions of the 2014 Act, the Council has also been tasked with carrying out a Rules Rewrite Project to consolidate, harmonise and simplify rules of the civil courts in Scotland.

The foundations for this work began in 2015-16, with rules of court made in relation to judicial review, the increase of the privative limit and the creation of the Sheriff Appeal Court and specialist Personal Injury Court.

During 2016-17, further priorities were identified for the next phase of courts reform implementation and the following progress has been made.

- Simple Procedure – during 2015-16, it was agreed that the new Simple Procedure Rules should be split into two sets: the 'core' Simple Procedure Rules, which relate to actions for payment, delivery or for recovery of possession of moveable property or actions for specific implement; and the Simple Procedure (Special Claims) Rules, which relate to specialist actions including personal injury, multiple poindings, aliment, futhcoming and recovery of heritable property. The core Simple Procedure Rules, developed by the Access to Justice Committee, were made on 09 June 2016 and came into force on 28 November 2016. During the course of 2016-17, a number of amendments have been made to the Rules to take account of feedback received. The commencement of the Special Claims Rules was delayed to allow consultation. The development of these Rules has been taken forward by the Access to Justice and Personal Injury Committees.



- The creation of compulsory pre-action protocols – new rules creating a Personal Injury Pre-Action Protocol were developed by the Personal Injury Committee and came into force on 26 November 2016. The Committee has also established two sub groups to take forward work on compulsory pre-action protocols for actions relating to clinical negligence and disease.
- Case management – this is being taken forward by the Family Law Committee in the context of family law actions in the first instance. During 2016-17, the Committee commissioned research in relation to the operation of Chapter 33AA of the Ordinary Cause Rules and this work will continue into 2017-18.
- “Sweep up” – the Rules Rewrite Committee considered the remaining provisions of the 2014 Act and new rules came into force on 28 November 2016 in relation to execution of deeds and vexatious litigants. In addition, the Access to Justice Committee considered the provisions in relation to lay representation for non-natural persons and new rules also came into force on 28 November 2016.

As well as drafting rules required to support implementation of the provisions of the 2014 Act, the Council has also made progress on the Rules Rewrite Project to consolidate, harmonise and simplify the rules in Scotland’s civil courts. This work is being led by the Rules Rewrite Committee.

During 2015-16, the Council commenced a structural review for the Rules Rewrite Project and agreed a five stage project plan:

- the preparation of discussion papers;
- the preparation of procedural narratives;
- the agreement of a draft structure;
- the preparation of policy instructions on particular matters and
- the agreement of draft rules.

The first stage of work under the Rules Rewrite Project has been completed during 2016-17. The Council has recently approved the Committee’s recommendations for external engagement along with proposals for commencement of Stage 2, the preparation of procedural narratives. It is anticipated that the majority of this stage will be completed during 2017-18.

### *Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland*

The Report of Sheriff Principal Taylor's Review of the Expenses and Funding of Civil Litigation in Scotland was published on 11 September 2013. The Report contains 85 recommendations covering matters such as: recovery of judicial expenses; the employment of counsel in the sheriff court; fees for expert witnesses; the introduction of qualified one way costs shifting and increased availability of protective expenses orders; arrangements for ‘before the event’ insurance, speculative fee arrangements and damages based agreements; referral fees; and arrangements where litigation is funded by a third party.

The Costs and Funding Committee reported to the Council in March 2015, setting out its proposed approach to implementation of the Taylor Report. Since then, the Committee has continued to consider the recommendations made by Sheriff Principal Taylor that can be implemented by Act of Sederunt. These are primarily contained in Chapters 2 to 4 of the Report. During 2016-17, the Committee produced a policy discussion paper, outlining its policy proposals, which was approved by the Council in July 2016 and the drafting process has now been commenced. The Committee has also considered and approved options for combining the implementation of these recommendations in the sheriff court with a wider rationalisation of the rules regulating expenses. A small working group has been established to assist with the preparation of illustrative draft rules. A Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is to be introduced into the Scottish Parliament shortly which will give effect to some of the recommendations contained in the Taylor Report.

Sheriff Principal Taylor also recommended that the Council should form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses. From 1 April 2015, the Council's statutory functions were extended to give full effect to this recommendation and the remit of the Costs and Funding Committee was reviewed to include this function. During 2016-17, the Committee has considered the methodology to be adopted for reviewing fees and has submitted consultation proposals to the Council which will be considered shortly.

### *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*

In March 2016, the Council established a working group to consider the implementation of the Act. The group was chaired by Sheriff Principal Abercrombie, a member of the Council, and, given their respective interests, included representatives of the Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and the Scottish Government. Two sheriffs with expertise in fatal accident inquiries were also appointed, together with a representative from the Crown Office, an advocate, a solicitor and a representative of Victim Support Scotland. In November 2016, the Council consulted on draft rules of court setting out the procedure to be applied at fatal accident inquiries. The rules were designed to encourage the expeditious progress of fatal accident inquiries and make the most efficient use of time spent in court.

The draft rules were revised in light of the consultation responses received and the Council approved final rules at its March meeting. The Rules were made on 31 March 2017 and come into force on 15 June 2017. It was agreed that the Council undertake a review of the Rules approximately 18-24 months after commencement, and that consultation will take place with the Crown Office in relation to any significant amendment to the Rules.

### *Tribunals (Scotland) Act 2014*

The Tribunals (Scotland) Act 2014 received Royal Assent on 15 April 2014. The Act provides for the creation of a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session, with the Right Honourable Lady Smith as President of Scottish Tribunals.

Of particular relevance to the Council are the provisions within the Act which confer responsibility on the Court of Session for the making of tribunal rules and responsibility for preparation of those rules on the Council. The Act provides for a mandatory council

committee for tribunals and for the Council membership to include the President of Scottish Tribunals and a tribunals' representative.

During 2016-17, the Council's Secretariat has been working with Scottish Government policy holders to undertake preparatory work for these additional functions. A date to transfer the functions is still to be agreed.

### **(b) Consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules**

In addition to the major areas of work identified above, the Council has a continuing function to review rules in light of legal change, either through new legislation or developments in case law. This relates to the Council's 'care and maintenance' function and is often reactive work arising from legislative change or in light of developments in case law at Scottish, UK and EU level. This work is difficult to plan for and can have an impact on priorities already set, as it often involves fixed implementation timescales.

During 2016-17, the Council considered and approved a wide range of legislative change that required to be supported by court rules. Significant pieces of work included rules supporting the Human Trafficking and Exploitation (Scotland) Act 2015, the Bankruptcy (Scotland) Act 2016, the Counter-Terrorism and Security Act 2015 and the Serious Crime Act 2015.

### **(c) Consideration of potential improvements to procedures which can be taken forward without primary legislation**

This tranche of the Council's work relates to its function to review current practice and procedure in the courts. The Council can consider changes to rules of its own accord, changes required in response to policy initiatives, and general requests for changes from third parties. Some of the work progressed here links with the recommendations of the Gill Review.

The Council agreed a number of ongoing work priorities to be progressed by its Committee's during 2016/17 and the following progress has been made:

#### ***Technology in the Scottish Civil Courts***

The ICT Committee has undertaken comparative research to establish what might be done with available and potential technology in the Scottish civil courts including online dispute resolution. In particular, the Committee considered Lord Justice Briggs's proposals for online dispute resolution and an online court in England and Wales. In March 2017, the Council considered proposals developed by the ICT Committee and formally recorded its support for a long term objective of an online court in Scotland and, in particular, the development of a three tier online system similar to that developed by Lord Justice Briggs in his interim and final reports. The Council also noted the Committee's suggestion that the online court should be taken forward in Scotland using Simple Procedure cases in the first instance.

The Committee also considered a Discussion Paper about ICT in the courts which was prepared by the Rules Rewrite Drafting Team as part of the Rules Rewrite Project.

The Committee agreed a number of points of principle regarding the use of ICT in the civil courts.

### *Alternative Dispute Resolution*

The Access to Justice Committee had been reviewing the arrangements for the use of forms of alternative dispute resolution in the Scottish civil courts but this work had been delayed pending the Committee's work in relation to the new Simple Procedure. Moving forward, it is anticipated that this tranche of work will form part of the Rules Rewrite Project.

### *Lay Representation*

The Access to Justice Committee had also been reviewing the arrangements for actions conducted by party litigants, lay representatives and lay supporters, and the information and guidance available to each. Again this work was delayed pending work on the Simple Procedure Rules but some work has progressed during 2016-17. In particular, the Committee has submitted proposals to the Council in relation to lay representatives being able to cross-examine witnesses, which will be considered in due course.

During the course of 2016-17, the Council also gave consideration to the following matters in the exercise of this function:

### *Pursuers' Offers*

The Costs and Funding Committee developed proposals on behalf of the Council to allow a pursuer to put forward a formal offer in settlement. The new procedure came into force on 03 April 2017 and applies in the Court of Session and in sheriff court ordinary procedure in any case with a financial crave or conclusion, apart from those that cannot be granted without evidence. Actions of divorce and dissolution of marriage are therefore not included.

### *The Voice of the Child*

The Family Law Committee began considering proposals to improve the method of ascertaining the views of the child in family actions. A number of organisations which work with children have tested new draft forms prepared by the Committee for the purpose of seeking the views of the child in court proceedings. Feedback provided by the children and the organisations will be considered by the Committee in due course.

### *Protective Expenses Orders (PEOs)*

In September 2015, the Council considered a request from the Scottish Government proposing changes to the Rules of the Court of Session in relation to PEOs. This was approved and in 2016 the Rules in Chapter 58A were substantially amended. The amendments were concerned only with the scope of the Rules. The purpose was to ensure that the criteria imposed by the Rules, in so far as relating to the type of proceedings in which an application could be made, and the applicant's interest, more closely reflected the scope of the 'not prohibitively expensive' requirement in the Aarhus Convention.

Since that time, the Council has undertaken a further review of the Rules focusing on the prescribed test and the procedure by which applications are determined. The Council is currently consulting on draft rules which propose a new procedural model for applications for PEOs. The consultation closes on 23 June 2017.

## Summary of Rules Prepared

This section provides details of the draft rules submitted by the Council to the Court of Session during 2016-17 for consideration. It contains rules submitted in relation to all of the Council's work tranches narrated above.

### *Miscellaneous Instrument: Sheriff Appeal Court*

The **Act of Sederunt (Sheriff Appeal Court Rules 2015 and Sheriff Court Rules Amendment) (Miscellaneous) (2016)** was made on 07 June 2016 and came into force on 07 July 2016. It amended the Act of Sederunt (Sheriff Appeal Court Rules) 2015 and various sheriff court rules, principally to address issues that have arisen since the Sheriff Appeal Court assumed its civil jurisdiction and competence on 01 January 2016. It also made minor miscellaneous amendments to correct errors.

### *Implementation of Simple Procedure*

The **Act of Sederunt (Simple Procedure) 2016** was made on 09 June 2016 and came into force on 28 November 2016. It provided rules of court, forms and a set of standard orders for the Simple Procedure to replace the small claims procedure for cases which have a value of £5,000 or less in the sheriff court.

### *Personal Injury Pre-Action Protocol*

The **Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016** was made on 20 July 2016 and came into force on 28 November 2016. It introduced a new chapter into both the Ordinary Cause Rules (Chapter 3A) and the Summary Cause Rules (Chapter 4A) requiring parties to a prospective action of damages for personal injury to comply with a compulsory protocol prior to commencing proceedings.

### *Miscellaneous Instrument: Implementation of Courts Reform (Scotland) Act 2014*

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Miscellaneous) 2016** was made on 12 August 2016 and came into force on 28 November 2016. It introduced new rules in relation to implementation of section 87 (power of sheriff to order sheriff clerk to execute deed relating to heritage) and section 100 (vexatious litigation orders) of the Courts Reform (Scotland) Act 2014. It also corrected minor numbering errors in rule 36.L1 of the Ordinary Cause Rules and in the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016.

*Lay representation for non-natural persons*

The **Act of Sederunt (Lay Representation for Non-Natural Persons) 2016** was made on 30 August 2016 and came into force on 28 November 2016. It made provision regarding lay representation for non-natural persons in civil proceedings. It partly implemented Chapter 4 (lay representation for non-natural persons) of the Courts Reform (Scotland) Act 2014.

*Miscellaneous instrument: Form of charge for payment, Child Support Rules and Enforcement of Judgments*

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2016** was made on 30 August 2016 and came into force on 03 October 2016. It made miscellaneous amendments to the Act of Sederunt (Form of charge for payment) 1988, the Ordinary Cause Rules 1993, the Act of Sederunt (Child Support Rules) 1993, the Rules of the Court of Session 1994 and the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006.

*Implementation of the Bankruptcy (Scotland) Act 2016*

The **Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016** was made on 06 October 2016 and came into force on 30 November 2016. It made provision about the procedure to be followed in petitions for sequestration, and in certain applications and appeals to the sheriff relating to sequestrations. The Rules apply when the petition for sequestration is made on or after 30th November 2016.

The **Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016** was also made on 06 October 2016 and came into force on 30 November 2016. It made changes to court rules to take account of the coming into force of the Bankruptcy (Scotland) Act 2016.

*Miscellaneous Instrument: Simple Procedure Rules*

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 4) (Simple Procedure) 2016** was made on 11 October 2016 and came into force on 28 November 2016. It amended the Rules of the Court of Session 1994, the Sheriff Appeal Court Rules and various sheriff court rules in consequence of the commencement of Simple Procedure on 28th November 2016. Paragraph 7 made minor and typographical amendments to the Act of Sederunt (Simple Procedure) 2016.

*Fees of Solicitors and Shorthand Writers*

The **Act of Sederunt (Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment) 2016** was made on 12 October 2016 and came into force on 28 November 2016. It made various changes to the provisions governing the taxation of accounts of expenses in the sheriff court and Sheriff Appeal Court, and to the rules regulating the fees of shorthand writers.

### *Postal Administration Rules*

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Postal Administration) 2016** was made on 18 October 2016 and came into force on 16 November 2016. It amended Chapter 74 of the Rules of the Court of Session 1994 in consequence of the Postal Administration (Scotland) Rules 2016. It provided that an application for a postal administration order is to be made by petition to the Court of Session and made minor miscellaneous amendments to Chapter 74 in consequence of this.

### *Serious Crime Prevention Orders*

The **Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Serious Crime Prevention Orders etc.) 2016** was made on 19 October 2016 and came into force on 12 December 2016. It amended Chapter 76 of the Rules of the Court of Session Rules 1994 and the Summary Application, Statutory Applications and Appeals etc. Rules 1999 in consequence of the amendments made to the Proceeds of Crime Act 2002 by the Serious Crime Act 2015. These amendments extended the availability of Serious Crime Prevention Orders so that they can be made in Scotland.

The Act of Sederunt also made changes to the Rules of the Court of Session Rules 1994 and the Summary Application Rules 1999 in consequence of schedule 1 (apart from paragraph 7) of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.

### *Miscellaneous Instrument: drafting amendments*

The **Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2016** was made on 10 November 2016 and came into force on 28 November 2016. It made miscellaneous amendments to various sheriff court rules.

Paragraphs 2 and 7 corrected minor drafting errors in the Ordinary Cause Rules 1993 and the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016. Paragraphs 3-5 made amendments in relation to the new Simple Procedure. Paragraphs 3 and 4 amended the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 and the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) to make references to Simple Procedure. Paragraph 5 amended the Act of Sederunt (Simple Procedure) 2016 to provide that trainee solicitors may act as legal representatives in Simple Procedure cases and clarified how a Charge must be formally served before a decision can be enforced. Paragraph 6 amended the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rule Amendment) (Bankruptcy (Scotland) Act 2016) 2016 to ensure that certain forms in the 2008 Rules continue to have effect in relation to trust deeds executed before 30 November 2016.

### *Miscellaneous Instrument: Small Business, Enterprise and Employment Act 2015 and jury precepts*

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 5) (Miscellaneous) 2016** was made on 23 November 2016 and came into force on 24 December 2016. It amended the Rules of the Court of Session

in consequence of amendments made by the Small Business, Enterprise and Employment Act 2015. It also amended the form of jury precept used in the Court of Session, increasing the number of jurors cited from 36 to 50. Finally, it amended the Act of Sederunt (Company Directors Disqualification) 1986 to replace a redundant statutory reference.

### *Appeals to the Court of Session*

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Leave to Appeal) 2017** was made on 10 January 2017 and came into force on 07 February 2017. It made amendments to the Rules of the Court of Session, and forms of application, in certain appeals to the Court.

### *Temporary Exclusion Orders*

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Temporary Exclusion Orders) 2017** was made on 31 January 2017 and came into force on 14 February 2017. It made amendments to the Rules of the Court of Session 1994 to make provision in respect of proceedings under the Counter-Terrorism and Security Act 2015.

### *Pursuers' Offers*

The **Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Pursuers' Offers) 2017** was made on 28 February 2017 and came into force on 03 April 2017. The Rules introduced a mechanism by which a pursuer can put forward a formal offer in settlement. The Rules apply in the Court of Session and in sheriff court ordinary procedure in any case with a financial crave or conclusion, apart from those that cannot be granted without evidence, such as divorce or dissolution of marriage.

The **Act of Sederunt (Fees of Solicitors in the Court of Session and Sheriff Court Amendment) (Pursuers' Offers) 2017** was also made on 28 February 2017 and came into force on 03 April 2017. It amended the applicable tables of fees to include fees for making and considering pursuers' offers.

### *Fatal Accident Inquiry Rules*

The **Act of Sederunt (Fatal Accident Inquiry Rules) 2017** was made on 31 March 2017 and comes into force on 15 June 2017. The Rules support the implementation of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 and set out how fatal accident inquiries are to work in practice, aiming to make them more efficient.

## **Formal Recommendations**

One of the Council's key functions is to advise and make recommendations on the development of and changes to the civil justice system in Scotland. Section 3 of the 2013 Act provides the Council with the power to take such action as it considers necessary or desirable in pursuance of its functions. Section 3(2)(f) goes on to provide that in particular,



the Council may “provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system”.

Under section 5(3) of the 2013 Act the Council's Annual Report must include a summary of the recommendations made by the Council during the period covered by the report.

In 2016-17, the Council made one recommendation to the Scottish Ministers in relation to implementation of the Courts Reform (Scotland) Act 2014.

### *Section 115 of the Courts Reform (Scotland) Act 2014*

Section 115 of the 2014 Act introduces a new section 31A into the Court of Session Act 1988 and allows the Court of Session to provide, by Act of Sederunt, for the leave stage of appeal proceedings to be combined with a sifting process whereby grounds of appeal can be struck out.

Currently, the leave stage of an appeal is dealt with by a procedural judge. The procedural judge sits as a Division of the Inner House (and effectively *is* the Division for all procedural stages of an appeal). As such, the decision of that judge is final and there is no review mechanism. If section 31A(1) is implemented so that leave applications to the Inner House are dealt with by a single judge, the decision of that judge will be subject to review by a Division of the Inner House. This would add an additional procedural layer which does not exist at present.

This matter was considered by the Rules Rewrite Committee and the Committee noted that the question of whether it will be worthwhile implementing section 31A will depend upon whether the time to be saved by not dealing with unmeritorious / weak grounds of appeal will be greater than the time which will be spent reviewing decisions on leave and on substantive grounds.

Following informal consultation with the Court of Session's administrative judges, the Committee agreed that the best way forward was for section 31A to be partially implemented and that subsection (3), which contains the review mechanism, should be repealed. This approach can only be achieved by primary legislation.

Following its meeting on 21 November 2016, the Council wrote to the Scottish Ministers to formally recommend that subsection (3) of section 31A of the Court of Session Act 1988 be repealed.

Discussions are ongoing between officials of the Scottish Ministers and the Council's Secretariat to look at the matter further in order to develop a workable solution.

## **Research**

During 2016-17, the Council undertook the following research:

### *Case Management in Family Actions*

In July 2016, the Council considered and approved a research specification developed by the Family Law Committee as a second phase of research into case management

in family actions. The aim of the research was to ascertain the reasons for the apparent variations in the use made of the judicial case management tools available for hearings in certain family actions (child welfare hearings, options hearings and case management hearings). A legal researcher was commissioned to conduct interviews with sheriffs, sheriff clerks and solicitors in four study courts to explore the themes identified by preliminary research undertaken by the Committee. The researcher also considered a data extract in relation to hearings held in family actions per court. The research has now been completed and the research report is due to be considered by the Family Law Committee at its May meeting.

### *Abolition of Petitions/Summons Procedure*

In September 2016, the Council considered and approved a research proposal developed by the Rules Rewrite Committee in relation to petition and summons procedure. This work directly linked to Recommendation 56 of the Report of the Scottish Civil Courts Review which proposed that: “The Civil Justice Council for Scotland should address the amendments required to abolish the distinction between ordinary and petition procedure in the Court of Session”. The research was approved on the basis that the rewrite project would benefit from outside expertise in this technical area. The Committee considered that this work could lead to a fundamental change in civil court procedure which accordingly merited the views of an expert. The purpose of the research was to consider the history of the distinction between petition and summons procedure and the legal and principled basis for that distinction. It was also to consider any difficulties likely to be presented by the proposal to remove the distinction as well as the difficulties caused by the distinction in present practice. The aim was to enable the Committee to be fully informed before making any recommendations.

The research report was received in December 2016 and was incorporated into a discussion paper prepared by the Rules Rewrite Drafting Team looking at petitions and summons procedure. This has subsequently been incorporated into the Rules Rewrite Project Phase 1 report, *The New Civil Procedure Rules (Chapter 3)*.

## Consultations

During 2016-17, the Council undertook the following consultations:

### *Fatal Accident Inquiry Rules*

As noted above, in November 2016, the Council launched a consultation on the draft Fatal Accident Inquiry Rules. The Council received 19 responses to the consultation. Of the 19, 18 respondents indicated that they were content for their responses to be published on the Council’s website, and these were published on 9 February 2017.

The draft rules were revised in light of the responses received and approved by the Council at its March meeting. The Rules and Consultation Report were published on the Council’s website in April 2017.

### *Simple Procedure (Special Claims) Rules*

The Council agreed that a formal public consultation was not necessary for the Special Claims Rules. Instead, due to the specialist nature of the Rules, an informal consultation exercise was agreed, targeting stakeholders in fields such as housing and personal injury to obtain relevant and useful feedback.

This took the form of a series of focus groups with relevant stakeholders, many of whom had been respondents to the formal consultation on the core Simple Procedure Rules, during December 2016 to February 2017.

A readability exercise also took place, in which lay persons with no legal background were asked to familiarise themselves with the draft rules. They were then asked a number of questions which required them to navigate the rules to find the answers.

The draft rules were revised following both the informal consultation and readability exercise.

### *Protective Expenses Orders*

The Council launched a consultation seeking views on draft rules for Protective Expenses Orders (PEOs) in March 2017. The rules propose a new procedural model for applications for PEOs. The draft rules seek to ensure that, where applicable, the rules regulating applications for PEOs in environmental proceedings operate so as to give proper effect to the requirement under the Aarhus Convention and European Union Law that proceedings should be 'not prohibitively expensive'. The consultation closes on 23 June 2017.

## **Communications and Engagement**

Promoting Council activity to practitioners and users of the civil justice system, as well as engaging with other justice organisations, is a key part of the Council's work.

The Council's website was launched with the establishment of the Council and acts as the hub for communicating all Council activity. All official publications, details of council and committee meetings, agendas and selected papers, and civil court rules prepared by the Council, are available online. The Council also has its own Twitter account, which informs followers of the Council's work.

In January 2016, *Update*, the Council's newsletter was launched, which provides regular updates on the work of the Council and its committees. This is published every two months on the Council's website and distributed to interested parties. The readership of this publication has grown steadily since it was first produced.

## **Freedom of Information**

The Council operates in an open and transparent manner and is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Council adopted the Scottish Information Commissioner's Model Publication Scheme in 2013. Its [Publication Scheme and Guide to Information](#) has since been updated in line with the 2016 Model Publication Scheme. To support its members and committees with obligations under FOISA for the storing of records, the Council agreed and published a [Records Management Plan](#) in February 2014. In September 2015, the Council was added to the list of named public authorities to which the terms of the Public Records (Scotland) Act 2011 apply. Under the terms of the 2011 Act, public authorities listed at the Schedule to the Act are required, under section 1, to prepare a records management plan, submit that plan to the Keeper of the Records of Scotland for agreement and ensure that its public records are managed in accordance with the plan. The Secretariat is currently liaising with the National Records of Scotland to revise the Council's existing plan with a view to finalising it for submission by the end of July 2017.

The Council has received five requests for information under FOISA in 2016-17. All requests were dealt with within the statutory timescales.

<b>Number of requests received under FOISA 2016/17</b>	
Legal profession	1
Members of the public	3
MSPs/MPs	1
Press/media	0
Other	0
<b>TOTAL</b>	<b>5</b>

<b>Outcome of requests received under FOISA 2016/17</b>	
Information supplied	2
Information partially supplied	1
Information withheld	0
Insufficient information provided by the requester to respond	0
Information not held	2
Request withdrawn	0
<b>TOTAL</b>	<b>5</b>

## Summarised Expenditure

Property, services and staff (including the Council Secretariat and legal support from the Lord President's Private Office) are provided to the Council by the Judicial Office for Scotland (a distinct arm of the SCTS, which provides support to the judiciary).

As detailed in the Annual Programme for 2016-17, the resources allocated to the Council during 2016-17 were approximately £760,243, made up of £695,243 for staffing costs and £65,000 for other operating costs.

In terms of staffing, it was anticipated that a drafting team of five solicitors would be required to support courts reform, in terms of implementation of the 2014 Act and the Rules Rewrite Project. At the beginning of the year, 4.7 (full time equivalent) drafters were allocated to that team. Owing to a number of arising vacancies throughout the reporting period, staff costs are slightly less than projected.

While the Council has spent less than allocated, costs are continuing to rise as the Council builds its operations and moves to a more pro-active role in looking at longer-term issues relating to the wider development of the civil justice system.

SCJC Annual Expenditure 2016/17		
Category	Description	£*
Staffing (Secretariat)	Secretary (0.15 Full Time Equivalent) Deputy Secretary Business and Policy Manager 3 Policy Officers 0.2 (Full Time Equivalent) Communications Officer	216,947
Staffing** (Legal)	1.8 (Full Time Equivalent) Solicitors from LPPO Legal Secretariat 4.7 (Full Time Equivalent) solicitors for the Rules Rewrite Drafting Team	435,836
Consultation and Research	Public consultations can be dealt with largely electronically, however, provision is included for consultation and research in order that independent advice can be sought to analyse responses, or undertake surveys / structured interviews / consultation events etc.  Occasional research may be commissioned directly from subject matter experts to support some elements of the work programme.	22,263
General Expenses	Other general costs of running the Council and Committees e.g. stationery, catering etc.	5,205
Expenses	Reimbursement of Council and Committee members' Travel & Subsistence, additional expenditure and financial loss.	891
Recruitment	Ongoing recruitment of and training for new Council members.	N/A

and Training		
Venue Hire and Hospitality	Occasional venue hire, hospitality and publicity costs which may be required for conferences, events, facilitated workshops etc.	4,162
<b>Total staffing</b>		652,783
<b>Total other</b>		32,521
<b>TOTAL</b>		685,304

\*Note: all figures are rounded up to the nearest £

\*\*As legal services to the Council are provided by lawyers of the Lord President's Private Office on a part-time basis, this figure is approximate.

## Annual Programme 2017/18

### Key Priorities

During 2017-18, the Council will continue to give focus to the following matters to ensure it discharges its key functions:

- continued implementation of major justice system reform projects;
- consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules (this is the 'care and maintenance' element of the rules) and
- consideration of potential improvements to procedures which can be taken forward without primary legislation.

A new tranche of the Council's work for 2017-18 will be its review function. This relates to new rules developed by the Council which it has agreed to review at a future date.

### *(a) Justice System Reform*

There are three major initiatives which will continue to have a direct impact on the work of the Council during 2017-18:

- implementation of the Scottish Civil Courts Review recommendations;
- the recommendations of Sheriff Principal Taylor's Review of Expenses and Funding in Civil Litigation in Scotland and
- work generated by the Tribunals (Scotland Act) 2014.

### *Civil Courts Reform*

This has been the major focus of the Council's work to date. Primary focus has been on the implementation of the reforms for which the legislative underpinning was provided in the Courts Reform (Scotland) Act 2014 and implementation of these is almost complete. During 2017-18, the Council will continue to progress the final piece of work, the Simple Procedure (Special Claims) Rules, which are being developed by the Access to Justice and Personal Injury committees.

The Council will also continue to progress its work in relation to the Rules Rewrite Project. The Project encompasses many recommendations of the Gill Review. The first stage of the work under the Project is completed and the Council has agreed a number of recommendations for external engagement. Stage 2 of the Project, the preparation of procedural narratives, will progress during 2017-18. It is intended that area specific working groups will be set up of council / committee members together with suitable external experts, where necessary. Areas for consideration will include 'commencement and initial case management', 'decrees, extracts and enforcement', and 'evidence, proof and hearings'.

The final tranche of courts reform implementation is the wider Gill Review recommendations that can be taken forward by the Council without the need for primary legislation. This work engages a number of the Council's functions. A number of recommendations were identified by the Council as a priority at an early stage and

the progress to date is noted below:

- Compulsory pre-action protocols – this is being progressed by the Personal Injury Committee. A personal injury protocol was introduced in November 2016 and work is being undertaken to develop compulsory protocols for industrial disease and clinical negligence. This work will continue into 2017-18. Although no formal review has been agreed, it is expected that feedback from the operation of the personal injury protocol will feed into the protocols currently under development.
- Rules for enforcement / sanctions to ensure adherence to the rules. It had been anticipated that this matter would be considered by the Costs and Funding Committee as part of its work on implementation of Sheriff Principal Taylor's Report on Costs and Funding of Civil Litigation. However, this has now been included in the Rules Rewrite Project as part of the court's case management powers and will no longer be taken forward as a separate tranche of work.
- Judicial case management in family actions – the Family Law Committee are progressing work looking at the operation of Chapter 33AA and commissioned research during 2016/17. It is anticipated that this work will continue into 2017-18.
- Alternative Dispute Resolution – this had been allocated to the Access to Justice Committee to progress. A literature review was undertaken in 2014. However, this matter had been put on hold pending the Committee's work on Simple Procedure. This matter has also now been included in the Rules Rewrite Project and will no longer be taken forward as a separate tranche of work.

During 2016-17, work has been undertaken to identify the remaining recommendations that fall out-with the scope of the Rules Rewrite Project and that could be progressed by the Council without the need for primary legislation.

Some work has progressed naturally by the committees in the areas identified and some recommendations have now been superseded by other pieces of work, most notably Sheriff Principal Taylor's Review of Costs and Funding of Civil Litigation. During 2017-18, further work will be undertaken at committee level to identify what recommendations are still relevant and thereafter agree proposals for what should and should not be taken forward for consideration by the Council.

### *Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland*

This work will continue to be progressed by the Costs and Funding Committee during 2017-18. A drafting exercise is being undertaken to combine the implementation of the Taylor recommendations with a wider rationalisation of the rules regulating the taxation of expenses in all civil courts. It is anticipated that recommendations will be presented to the Council by the end of this report period.

Most of the proposals contained in the Review will require primary legislation. These are expected to be included in the Civil Litigation (Expenses and Group Proceedings) Bill, which is due to be introduced this month.



***Tribunals (Scotland) Act 2014***

The 2014 Act makes provision for the Council's functions to be widened to include the Scottish Tribunals. At present this relates only to devolved tribunals but work is currently being undertaken for the transfer of reserved tribunals into the Scottish Tribunals structure in terms of the commitment made following the Report of the Smith Commission on further devolution of powers to the Scottish Parliament. This will have substantial resource implications for the work of the Council and the Secretariat. Discussions are currently ongoing with policyholders to agree a date for the Council to assume its tribunal functions but it was originally anticipated to be during 2018. Preparatory work will require to be undertaken in relation to setting up a new Tribunal Committee and extending the membership of the Council.

***(b) Consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules***

In addition to the major areas of work identified above, the Council has a continuing function to review rules in light of legislative change, either through new legislation or developments in case law. This relates to the Council's 'care and maintenance' function and is often reactive work arising from legislative change or in light of developments in case law at Scottish, UK and EU level. This work is difficult to plan for and can have an impact on the priorities set, as it often involves impending implementation timescales.

During 2017-18, the Council is expected to consider the following pieces of legislation that are likely to require court rules:

- Housing (Scotland) Act 2014
- Succession (Scotland) Act 2016
- Intellectual Property Act 2014
- Psychoactive Substances Act 2016
- Criminal Finances Act 2017
- Investigatory Powers Act 2016
- Immigration Act 2016.

Turning to developments in case law, the judicial rate of interest has featured on the Council's Business Plan for the last two years. This matter was identified following the decision of the Inner House in *Farstad AS v Enviroco Limited* in 2013. Discussions had taken place with Government colleagues in relation to a joint consultation, but that has not progressed. The Council has agreed to consider this matter as one of its priorities for 2017-18.

***(c) Consideration of potential improvements to procedures which can be taken forward without primary legislation***

This tranche of the Councils' work relates to its function to review current practice and procedure in the courts and the Council can consider changes in response to policy initiatives, general requests for changes to rules or of its own accord.

In addition to the work being undertaken above as part of the wider civil court reforms, the Council will also continue to progress the following areas of work:

### *Protective Expenses Orders*

This work is being undertaken at Council level. The Council launched a formal consultation on draft rules in March 2017. The consultation is due to close in June 2017 and it is anticipated that revised rules will be considered at the Council's meeting in October 2017.

### *Lay representation*

This is being progressed by the Access to Justice Committee. A literature review was undertaken in 2014 but the matter had been put on hold pending the Committee's work on Simple Procedure. Some initial work has been undertaken during 2016-17. The Committee anticipates submitting proposals for reform to the Council during 2017-18.

### *Regulation of Fees*

The functions of the Council include the preparation and submission of 'draft fees rules'. These are defined as rules made in exercise of the power to regulate fees conferred on the Court of Session by sections 105 and 106 of the Courts Reform (Scotland) Act 2014. At present the fees in question are the fees of solicitors, messengers-at-arms, sheriff officers, witnesses and shorthand writers.

This work has been progressed by the Costs and Funding Committee. During 2016-17, the Committee has explored options and methodologies for assessing and reviewing fee provisions. Consultation proposals are to be submitted to the Council for approval in due course proposing two consultation tranches, one for solicitor fees and one for all other fees. The first consultation tranche is anticipated to take place in summer, 2017 to tie in with the Law Society's Financial Benchmarking Survey. The consultation process will be an ongoing task for the Committee as part of the Council's function to review fees.

### *The Voice of the Child*

Work has been progressed by the Family Law Committee to improve the methods of ascertaining the views of the child in family actions. Work is ongoing to develop and test revised forms and proposals will be presented to the Council in due course.

### *(d) Review of rules*

This is a new tranche of the Council's work for 2017-18 and relates to new rules developed by the Council which they have agreed to review at a future date. The Rules Rewrite Committee is currently reviewing the rules for judicial review and the Sheriff Appeal Court. Recommendations for changes to the judicial review rules are due to be considered at the Council's May meeting. Initial work has commenced for the review of the Sheriff Appeal Court Rules and recommendations will follow in due course.

The Council has also agreed to undertake a review of the rules for the core Simple

Procedure and the Personal Injury Pre-action Protocol. Whilst these reviews are scheduled to take place around May 2018, preparatory work will require to be undertaken by the committees during 2017-18.

All of this ongoing work is detailed in the Business Plan (at pages 30-34). This has been structured on a council / committee basis.

## Resources

SCJC Resource Allocation 2017-18		
Category	Description	£*
Staffing (Secretariat)	Secretary (0.15 Full Time Equivalent) Deputy Secretary Business and Policy Manager 3 Policy Officers 0.2 Communications Officer	233,345
Staffing** (Legal)	1.8 (Full Time Equivalent) Solicitors from LPPO Legal Secretariat 4.7 (Full Time Equivalent) solicitors for the Rules Rewrite Drafting Team	464,429
Consultation and Research	Public consultations can be dealt with largely electronically, however, provision is included for consultation and research in order that independent advice can be sought to analyse responses, or undertake surveys / structured interviews / consultation events etc.  Occasional research may be commissioned directly from subject matter experts to support some elements of the work programme.	47,500
General Expenses	Other general costs of running the Council and Committees e.g. stationery, catering etc.	7,000
Expenses	Reimbursement of Council and Committee members' Travel & Subsistence, additional expenditure and financial loss.	2,000
Recruitment and Training	Ongoing recruitment of and training for new Council members.	2,000
Venue Hire and Hospitality	Occasional venue hire, hospitality and publicity costs which may be required for conferences, events, facilitated workshops etc.	6,500
<b>Total staffing</b>		697,774
<b>Total other</b>		65,000
<b>TOTAL</b>		762,774

\*Note: all figures are rounded up to the nearest £

\*\*As legal services to the Council are provided by lawyers of the Lord President's Private Office on a part-time basis, this figure is approximate.

The SCTS has a duty under section 62 of the Judiciary and Courts (Scotland) Act 2008 to provide property, services and staff as required for the Council. The staffing complement, which includes the Secretariat and legal support from the Lord President's Private Office, are provided by the Judicial Office for Scotland (a distinct arm of the SCTS, which provides support to the judiciary). A specialist drafting team, made up of government lawyers, continue in post to carry out the rules revisions under the Rules Rewrite Project. That team consists of a lead drafter and 3.7 others.

The costs attached to staffing the Council amount to approximately £697,774 per annum.

The Council has been allocated £65,000 for other operating costs (as detailed in the table above) during 2017-18 to assist it in carrying out its functions. The Council's budget allocation is subject to review by the SCTS.

## Governance

The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (the 2013 Act) sets out the statutory framework for the Council and that direction and oversight of the Council, in general terms, rests with the Lord President.

Within the framework of the 2013 Act, the Council has broad powers to regulate its own proceedings and those of its Committees. To that end, it has adopted Standing Orders which set out how the Council and its Committees will operate and which include a Code of Conduct for members. Membership of council committees is set by the Council and each committee operates within the remit set by the Council. These are subject to annual review. Committees provide regular reports to the Council on their activity and make recommendations about policy or draft rules when appropriate.

## Transparency

Each year, the Council must prepare, and lay before the Scottish Parliament an annual programme setting out its objectives and priorities; and an annual report on its activities.

The annual programme may be combined with the previous year's annual report, in accordance with section 5 of the 2013 Act.

Civil court rules are laid before the Scottish Parliament and are subject to parliamentary scrutiny (although the majority are not subject to the approval of or annulment by Parliament) and once made by the Court of Session are considered and reported on by the Delegated Powers and Law Reform Committee. This scrutiny has been of assistance to the Council in the further preparation, and reviewing of, draft rules.

The Council operates in an open and transparent manner and is subject to the provisions of the Freedom of Information (Scotland) Act 2002. The Council has adopted the Scottish Information Commissioner's Model Publication Scheme and published a guide to information in May 2013. The Council provides statistical returns to the Commissioner regarding its handling of requests on a regular basis.

The Council will conduct regular reviews of its performance and working arrangements as part of the preparation of its annual report.

### *Making Justice Work Programme (MJW)*

A large proportion of the work of the Council is overseen by the Scottish Government's MJW Programme. The programme has a supervisory board whose role is to ensure that the justice reform projects within the programme are carried out and the expected benefits delivered. Its membership comprises representatives of the Scottish Government's Justice Directorate; the Scottish Courts and Tribunal Service; the Crown Office and Procurator Fiscal Service; the Scottish Legal Aid Board; members of the judiciary; and the Association of Chief Police Officers in Scotland (ACPOS).

The Secretary to the Council is represented on the MJW 1 Programme Board (Effective Courts and Tribunals) under which the majority of civil courts reform is being taken forward. The MJW Programme features as a standing agenda item at Council meetings and the MJW 1 Programme Manager is an observer on the Council.

### **Working with Interested Parties**

The Council recognises the importance of working with other justice organisations and parties with an interest in the civil justice system. The Council will seek to engage with these groups and individuals and will draw from their experience through its committees and working groups and otherwise (through informal or targeted consultation) where appropriate.

### **Future Meetings**

The Council meets six times per year. Future meeting dates for 2017 are:

Monday 10 July 2017 at 10am

Monday 2 October 2017 at 10am

Monday 20 November 2017 at 10am.

## Business Plan 2017-18

Area of work	Subject	Progress	Key dates
<b>COUNCIL</b>			
Justice System Reform	Tribunals (Scotland) Act 2014	Monitoring of implementation and preparatory work for assumption of new functions. Ongoing discussion with policyholders to agree date for SCJC to assume function.	Not yet known
Improvements to procedures	Protective Expenses Orders	Consideration being given to the test and procedure regulating applications for Protective Expenses Orders. Consultation launched in March 2017 on revised draft rules.	Consultation closes June 2017; revised rules likely to be considered at October 2017 meeting.
Implementation of legislation and developments in case law	Consideration will require to be given to arising legislation with regard to the potential need for consequential amendments to rules	Acts and Bills to be scrutinised and policy proposals considered in due course. Implementation dates to be confirmed. Legislation currently in sight includes:  <u>Acts of the Scottish Parliament:</u> a. Housing (Scotland) Act 2014 b. Succession (Scotland) Act 2016  <u>UK legislation:</u> c. Intellectual Property Act 2014 d. Psychoactive Substances Act 2016 e. Criminal Finances Act 2017 f. Investigatory Powers Act 2016 g. Immigration Act 2016	Not yet known.
<b>ACCESS TO JUSTICE COMMITTEE</b>			
Courts Reform - Courts Reform (Scotland) Act 2014	Simple Procedure (Special Claims) Rules  (in consultation with Personal Injury Committee)	Informal consultation took place in January 2017  Final rules to be approved by the Council. Transitional, consequential and fees instruments to be considered in due course.  Draft rules incorporate recommendations 89 and 90 of the Gill Review (procedural protections in rented repossession cases and all housing cases to call in court)	To be confirmed
Improvements to procedures	Lay representation, lay support and party litigants	Literature Review produced in 2014. Matter was further considered at Committee meetings on 29 August and 17 October.	No timescales identified for recommendations to be made.  By the end of the year, it is anticipated that

Area of work	Subject	Progress	Key dates
			reform recommendations will be presented to the Council for approval.
Improvements to procedures	Commercial Dispute Resolution - improving Scotland's offering as a seat of commercial dispute resolution.	Paper produced by member Brandon Malone	Not yet known.
Review of rules	Review of core Simple Procedure Rules	The Council agreed that these rules be reviewed around 18 months after implementation. This is around May 2018. It is anticipated that preparatory work will commence during the latter end of 2017/18.	Review: May 2018
<b>COSTS AND FUNDING COMMITTEE</b>			
Justice System Reform	Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland	A drafting exercise is being undertaken to combine the implementation of the Taylor recommendations in the sheriff court with a wider rationalisation of the rules regulating expenses.	Recommendations anticipated to be presented to Council by the end of the reporting year
Improvements to procedures	Regulation of fees	Exploration of options and methodologies for assessing and/or reviewing fee provisions. Consultation proposals submitted to Council for approval. Proposal for two consultation tranches, one for solicitor fees and one for all other fees.	First consultation tranche anticipated Summer 2017. The consultation process will be ongoing as part of the Council's function to review fees.
Courts Reform - Courts Reform (Scotland) Act 2014	Simple Procedure (Special Claims) Rules – fees amendments  (in consultation with Access to Justice and Personal Injury Committees)	Fees instruments to be considered following approval of procedural rules.	Summer 2017

Area of work	Subject	Progress	Key dates
Courts Reform – remaining Gill recommendations to be considered	Offers in settlement (Recs 107-111) Funding of multi-party actions (Recs 173-182) Cost and funding of litigation – judicial expenses (Recs 183-190) Taxation (Recs 197-199) Speculative fee arrangements (Rec 200)	Committees to consider the relevant recommendations and agree an implementation plan	To be agreed
Implementation of legislation and developments in case law	Judicial Rate of Interest - Consideration - following the decision of the Inner House in Farstad AS v Enviroco Limited [2013]	No progress to date.	No set timescale.
<b>FAMILY LAW COMMITTEE</b>			
Courts Reform – wider Gill recommendations identified as a priority	Judicial case management – being considered separately in the context of family law actions; otherwise will be considered as part of Rules Rewrite Project (Recommendation 67)	Independent research commissioned and Report from legal research consultant to be considered by the Family Law Committee in due course.	Ongoing
Improvements to procedures	The Voice of the Child - improving the method of ascertaining the views of the child in family actions	Stakeholder groups piloted revised Forms F9.1 and F9.2 with groups of children in January and February 2017. Feedback to be considered in due course.	No set timescale
Courts Reform – remaining Gill recommendations to be considered	Children's Hearings (Rec 73) Curators, reporting officers, safeguarders and	Committees to consider the relevant recommendations and agree an implementation plan	To be agreed



Area of work	Subject	Progress	Key dates
	court reporters (Rec 74)  Information, family support and mediation services (Rec 77)		
Improvements to procedures	Extension of Simplified Divorce to cases where there are children under 16	Timing is dependent on SG consideration of its position in relation to gender recognition divorces and discussion with the Scottish Transgender Alliance. It is anticipated that this will take place around May 2017.	Timescales to be confirmed. Council to consult on draft rules alongside Scottish Government consultation
<b>ICT COMMITTEE</b>			
Improvements to procedures	Consideration of ongoing policy developments in relation to digital reform	Recommendations considered and approved at March 2017 meeting.  It is anticipated that this work stream will gain momentum over the coming year with the development of the SCTS's integrated case management system.	Ongoing
<b>PERSONAL INJURY COMMITTEE</b>			
Courts Reform - Courts Reform (Scotland) Act 2014	Simple Procedure (Special Claims) Rules  (in consultation with Access to Justice Committee)	Informal consultation took place in January 2017  Final rules to be approved by the Council. Transitional, consequential and fees instruments to be considered in due course.	Summer 2017
Courts Reform – wider Gill recommendations identified as a priority	Compulsory pre-action protocols: clinical negligence and disease  (Recommendations 102-106)	Personal Injury Protocols came into force on 28 November 2016.  The Committee is currently developing compulsory protocols for disease and clinical negligence.	Anticipated Autumn 2017
Review of rules	Review of rules for the Personal Injury Pre-Action Protocols	The Council agreed that these rules be reviewed around 18 months after implementation. This is around May 2018. It is anticipated that preparatory work will commence during the latter end of 2017/18.	Review: May 2018
<b>RULES REWRITE COMMITTEE</b>			
Courts Reform - Courts Reform (Scotland) Act 2014	Implementation of the remainder of the Act	Act implemented with the exception of Section 115. Recommendation made by Council to Scottish Government for partial repeal. Ongoing discussions with policy officials.	Ongoing

Area of work	Subject	Progress	Key dates
Rules Rewrite Project	<p><b>In conjunction with other Committees:</b></p> <p>Rules Rewrite Project: project plan provides the following five stage process:</p> <ul style="list-style-type: none"> <li>• the preparation of discussion papers,</li> <li>• the preparation of procedural narratives,</li> <li>• the agreement of a draft structure,</li> <li>• the preparation of policy instructions on particular matters, and</li> <li>• the agreement of draft rules.</li> </ul>	<p>The first stage of work under the Rules Rewrite Project is completed. Proposals for commencement of Stage 2 – procedural narrative approved by the Council to take place during 2017/18 including:</p> <ul style="list-style-type: none"> <li>- accompanying articles for the Law Society Journal and Scottish Legal News regarding “The New Civil Procedure Rules”</li> <li>- presentations to interested stakeholder groups</li> <li>- a “Summer Tour” visiting all sheriffdoms</li> <li>- the setting up of area specific working groups which should be made up of 3-4 cross Council/Committee members together with, if necessary, suitable external experts.</li> </ul> <p>Areas for consideration will include “commencement and initial case management”, “decrees, extracts and enforcement”, and “evidence, proof and hearings”.</p>	Ongoing
Review of Rules	Rules for Judicial Review	Draft rules submitted to Council for consideration.	Likely May 2017
Review of Rules	Sheriff Appeal Court Rules	<p>Rules came into force in January 2016 and the Council agreed to review the operation of the rules around September 2017. Following discussion with the Sheriffs Principal, this was brought forward and commenced forthwith.</p> <p>A discussion paper incorporating feedback from the Sheriffs Principal and SCTS operational staff is being prepared for consideration by RRC.</p>	Likely June 2017

## Further Information and Contacts

Full information about the Council and its activities are available at [www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk). The website is updated regularly with news about the SCJC and provides full details of Council and committee meetings, Council publications, draft rules under consideration and rules which have been recently made.

The Council publishes a newsletter, Update, which provides up-to-date information about its ongoing work. This is published around six times per year and can be accessed via the [publications](#) page. If you would like to be added to our email list to receive links to future editions, please contact us.

You can also follow us @ScottishCJC for the latest updates.

The Council welcomes all feedback in relation to the practical workings of the rules of court. You can contact us as follows:

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