

**SCJC interim update on priorities identified in Annual Programme 2016/17**

Subject	Action	Lead	Key dates	Progress
<b>JUSTICE SYSTEM REFORM</b>				
Courts Reform Implementation	<u>Courts Reform (Scotland) Act 2014</u>			
	Simple Procedure (Special Claims) Rules	Access to Justice Committee in conjunction with the Personal Injury Committee	Summer 2017	Draft rules and consultation plans to be considered at November 2016 Council meeting  Informal consultation to take place December 2016 to February 2017  Final rules to be approved at May 2017 SCJC meeting
	Implementation of the remainder of the Act including lay representation for non-natural persons, vexatious proceedings and interdicts and other orders	Rules Rewrite Committee in conjunction with other committees as necessary	Commencement Orders awaited; next commencement date 28 November 2016	Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Miscellaneous) 2016 made on 12 August 2016 and coming into force on 28 November 2016 containing new rules

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				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
	<p><u>Wider SCCR recommendations</u></p> <p>Compulsory pre-action protocols – being considered in the context of personal injury actions in the first instance</p>	Personal Injury Committee	Initial proposals for a personal injury pre-action protocol submitted to Council in July 2016 with proposals for additional pre-action protocols to be submitted in due course	<p><a href="#">Rules and protocol</a> for claims of damages up to £25,000 made on 20 July 2016 and come into force on 28 November 2016</p>

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				<p>Personal Injury Committee currently developing a clinical negligence protocol.</p> <p>The Committee will consider how best to develop a compulsory industrial disease pre-action protocol at its 17 October 2016 meeting</p>
	Rules for enforcement / sanctions to ensure adherence to rule	Costs and Funding Committee	Ongoing along with consideration of Taylor review	See comments in relation to Taylor Review below
	Judicial case management – being considered in the context of family law actions in the first instance; research to be undertaken in this area during 2016/17	Family Law Committee	Ongoing	Report from legal research consultant to be submitted by March 2017 at the latest; to be considered by FLC thereafter
	Alternative Dispute Resolution - review the arrangements for the use of Alternative Dispute Resolution methods in appropriate cases in the sheriff court and the Court of Session	Access to Justice Committee	Ongoing	The Secretariat will shortly prepare a paper on areas for consideration for a future meeting. Those matters relating to the new

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				Simple Procedure have been progressed as part of that work
	Remaining Gill Review recommendations	Rules Rewrite Committee	Ongoing	Work has been undertaken to allocate those recommendations (Gill) which fall within the Rules Rewrite project and which are to be taken forward. Some work has been done to allocate specific recommendations to subject area committees for consideration. It is anticipated that this work will be completed by the Autumn
Rules Rewrite Project	<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> </ul>	Rules Rewrite Committee	Ongoing	The RRC has considered the first three discussion papers on a statement of principle, a model for case management,

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	<ul style="list-style-type: none"> <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>and the form, style and language of court rules</p> <p>Questionnaires have been sent to court staff regarding potential otiose provisions within the rules (both Court of Session and sheriff court) and the RRC has commissioned expert research regarding the abolition of the distinction between petition and summons procedures. The ICT committee will shortly consider a discussion paper on the use of IT in the Courts. It is anticipated that stage one will be completed by the end of the year with work beginning on the procedural narratives in 2017</p>

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Tribunals (Scotland) Act 2014	Monitoring of implementation and preparatory work for assumption of new functions	SCJC (Secretariat to monitor)	Preparatory work commenced in 2016 for SCJC functions in 2017	The Policy Memorandum for the Bill notes that at the point when the SCJC receives the responsibility for preparing procedural rules, the Scottish Government anticipate that rules will already be in place and do not therefore expect the SCJC to have a substantial workload in making tribunal rules
Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland	Costs and Funding Committee to consider implementation; policy discussion paper to be submitted to the Council for consideration and thereafter drafting process will commence	Costs and Funding Committee	Implementation timescales being considered	Committee to consider how best to develop draft rules at its January 2017 meeting; update on proposed timescales to be provided thereafter
Inquiries into Fatal Accidents and Sudden Deaths etc.	FAI working group to consider implementation of the 2016 Act with a view to making proposals for draft inquiry procedure rules	FAI working group	21/11/16 – Council to approve draft rules for consultation	The working group has recently submitted consultation

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(Scotland) Act 2016			20 March 2017- Council to approve rules for laying	proposals to the Council for approval. The working group will present draft rules to Council on 21 November and seek approval to consult.
<b>IMPLEMENTATION OF LEGISLATION</b>				
Consideration of new and recent legislation	<p>In addition to work underway in respect of the major justice system reforms identified above, particular consideration will require to be given to the following legislation with regard to the potential need for consequential amendments to rules:</p> <p><i>Acts of the Scottish Parliament</i></p> <p>a. Housing (Scotland) Act 2014</p> <p>b. Human Trafficking and Exploitation (Scotland) Act 2015</p>	Council and relevant committees	SCJC Secretariat will liaise with relevant policy teams as to timescales for implementation	<p>a. Implementation anticipated end of 2017; further scrutiny required</p> <p>b. Commencement date 01 April 2017; policy paper anticipated for November meeting</p>

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	<p>c. Succession (Scotland) Act 2016</p> <p>d. Bankruptcy (Scotland) Act 2016</p> <p><i>UK legislation</i></p> <p>e. Counter-Terrorism and Security Act 2015</p> <p>f. Intellectual Property Act 2014</p>			<p>c. Implementation date not yet known; further scrutiny required</p> <p>d. Implementation date 30 Nov 2016; rules approved by Council on 03 Oct 16 and made on 10 October 2016</p> <p>e. Act already in force; draft rules being prepared in relation to Part 1, Chapter 2 and Sch 2&amp;3 of the Act</p> <p>f. Implementation timescales unknown, further</p>



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	<p>g. Serious Crime Act 2015</p> <p>h. Small Business, Enterprise and Employment Act 2015</p> <p>i. Psychoactive Substances Act 2016</p>			<p>scrutiny required</p> <p>g. Act already in force; draft rules approved by Council on 03 Oct 2016 and submitted to Court of Session</p> <p>h. Implementation timescales to be agreed. RRC to consider draft rules on 25 Oct 2016</p> <p>i. Implementation timescales unknown, awaiting policy paper if so advised</p>
Judicial Rate of Interest	The Council is giving consideration to the judicial rate of interest following the decision of the Inner House in <i>Farstad AS v Enviroco Limited</i> [2013]	Costs and Funding Committee	No set timescale	Awaiting release of joint consultation from the Scottish Government and

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				Ministry of Justice
<b>IMPROVEMENTS TO PROCEDURES</b>				
Protective Expenses Orders	Consideration being given to the test and procedure regulating applications for Protective Expenses Orders.	Council	No set timescale	Initial draft rules considered at Council meeting on 03 Oct 2016; revised draft rules and consultation proposals to be considered at next appropriate meeting
Lay representation, lay support and party litigants	Review the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session;  review the arrangements for lay representation and lay support in the sheriff court and the Court of Session; and  review the information and guidance that is available to party litigants, lay representatives and lay support in the sheriff court and the Court of Session.	Access to Justice Committee	Ongoing  Recommendations to be made to Council in due course	Matter was further considered at Committee meeting on 29 August and is on the agenda for meeting on 17 October. No timescales identified for recommendations to be made
Regulation of fees	Exploration of options and methodologies for assessing and/or reviewing fee provisions. This relates to fees of solicitors, messenger-at-arms, sheriff officers, witnesses and shorthand writers.	Costs and Funding Committee	No set timescale	The Committee will be considering this matter at its November meeting
Pursuers' offers	Consideration being given to the introduction of a formal system of pursuers' offers with a view to promoting early settlement	Costs and Funding	No set timescale	Proposed draft rules anticipated to be

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		Committee		considered by Council at its November meeting
The Voice of the Child	Consideration being given to improving the method of ascertaining the views of the child in family actions	Family Law Committee	No set timescale	Stakeholders views on revised Forms F9.1 and F9.2 to be considered at FLC meeting on 10 October 2016. Forms to be piloted with groups of children Autumn/Winter 2016  <a href="#">Rules</a> prohibiting the initial writ being attached to the form intimating a family action to a child came into force 3 October 2016
Extension of Simplified Divorce	Consideration to be given to the Scottish Government's suggestion that Simplified Divorce proceedings be extended to cases where there are children under 16. Draft rules prepared.	Family Law Committee	Timescales to be confirmed. Council to consult on draft rules alongside Scottish Government consultation	Following confirmation of the SG consideration of its position in relation to gender recognition divorces after its discussion with the Scottish Transgender Alliance, it is

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				anticipated that revised draft rules will be submitted to the FLC in early 2017
Digital reform	Consideration of ongoing policy developments in relation to digital reform including the following: <ul style="list-style-type: none"> <li>• Scottish Government Justice Digital Strategy</li> <li>• Civil Justice Council Report – online dispute resolution in England and Wales for low value civil claims</li> </ul>	ICT Committee	Ongoing	Committee recommendations being formulated for submission to the Council at its November meeting