



## Scottish Civil Justice Council Update – Issue 15: May 2018

### Council Activity

#### Appointments

Gavin Henderson has been appointed to replace Jan Marshall as the Scottish Ministers' representative on the Council.

#### Committee membership

Sheriff Hughes re-appointed to the Costs and Funding Committee for a further period of three years from 8 March 2018.

#### Ongoing work

- The Council agreed its [priorities](#) for inclusion in its Annual Programme
- The Council considered draft rules amending the core Simple Procedure Rules in relation to recall proceedings. Following discussion, it was agreed that these would be considered further by the Rules Rewrite Drafting Team and two of the judicial members of the Council with a view to presenting an amended draft to the full Council for consideration.
- Working groups in relation to Work streams 1, 2, 3, and 4 of the Rules Rewrite Project are now established and holding regular meetings. A group has been set up to consider Work stream 5 on Access to Justice. Topics to be considered include ADR and representation of parties. The first meeting date of this group is on 23 May 2018.

### Committee Activity

The [Access to Justice Committee](#) met on 23 April and considered the following matters:

#### *Independent Review of Regulation of Legal Services in Scotland*

Following the Committee's expression of interest in the independent review of the regulation of legal services in Scotland, and in particular the research being undertaken to investigate the structure of the legal services market, the review Chair, Esther Robertson, kindly agreed



to attend this Committee meeting to discuss the review.

Esther is supported by an independent panel, with the Chair's report and recommendations due in summer 2018. The remit of the review is to consider "*what changes may be needed to the statutory framework for the regulation of legal services to protect consumer interests and promote a flourishing legal sector*".

Esther provided the Committee an update on her review so far and discussed a number of related issues with the Committee.

#### *Lay Representation and Lay Support*

The Committee continued to consider lay representation and lay support in the Scottish courts and has now agreed its list of recommendations that it wishes to make to the Council. The Committee formally approved a draft report in relation to these recommendations, subject to stylistic or typographical amendment, for submission to Council.

#### *Public Interest Interventions*

The Committee continued its consideration of Public Interest Interventions in Scotland and, in particular, considered a recent paper from Committee member Ruth Crawford QC which analysed the initial proposals put forward in relation to this matter by Anna Poole QC. The Committee discussed Public Interest Interventions and broadly agreed that whilst there was enthusiasm to extend PII's to other types of cases, there would be a number of potential risks and policy implications in doing so and these should be considered by LPPO and the Secretariat in advance of the next appropriate meeting.

The [Costs and Funding Committee](#) met on 16 March 2018 and considered the following matters:

#### *Justice System reform: Taylor Review*

The main focus of the Committee has been the implementation of the Taylor recommendations in the sheriff court with a wider rationalisation of the rules regulating expenses that fall to be allowed on the civil taxation of an account of expenses and associated applications to the court. The Committee continues to consider the Working Group's recommendations of draft rules and associated tables of the draft Civil Taxation Rules.



*Rules review and implementation procedures: Regulation of Fees*

The Committee welcomed representatives from the Law Society of Scotland and invited them to offer any remarks regarding evidence to increases in solicitors' costs based on the Financial Benchmarking Report, or based on other information at the Society's disposal. The Committee agreed to recommend an increase to the underlying hourly rate and a draft instrument will be placed before the Committee at the May meeting with a view to being signed off by the Council.

The [Family Law Committee](#) last met on 5 February and considered the following matters:

*Proposals for Rules: Extension of Simplified Divorce and Dissolution*

The Committee considered and approved for submission to the Council revised draft rules and a revised draft consultation document in relation to the extension of simplified divorce and dissolution for cases involving children under 16. It was noted that the consultation has been drafted on the basis that it will be launched to coincide with the Scottish Government's consultation on a draft order under section 8(4) of the Civil Evidence (Scotland) Act 1988 – the making of such an order being a pre-requisite of the extension of the simplified procedure.

*Hearing the voice of the child in family actions*

The Committee considered an illustrative draft instrument inserting into the rules the new forms that will replace Forms F9, CP7 and 49.8-N and making some ancillary changes to the rules relating to hearing the voice of the child in family action. The Committee agreed to consider a revised draft by correspondence in advance of it being expanded to include provision about Chapter 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session. It was also agreed that further work would be undertaken in relation to the development of guidance to accompany the form.

*Child welfare hearings in the sheriff court*

The Committee considered a report submitted by the Scottish Courts and Tribunals Service about the structure of hearings in family and civil partnership actions at child welfare hearings in the sheriff court, in particular protection of parties when the court is made aware of domestic abuse or violent conduct being alleged or proved in a case. This report was produced in response to questions raised at the October Committee meeting. Members agreed that there did not appear to be a widespread problem and noted the lack of motions



being made to the court.

The [Personal Injury Committee](#) met on 09 April and considered the following matters:

*Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill – Qualified One Way Cost Shifting (Section 8 of the Bill)*

Whilst it is proposed that the Costs and Funding Committee (CAFC) should be the lead committee for these provisions, CAFC has agreed that the Personal Injury Committee should be invited to consider and recommend policy for the rules concerned with Qualified One-Way Costs Shifting. The Committee considered and agreed a number of potential further exceptions to the costs protection afforded by section 8 of the Bill. These recommendations will be considered by the CAFC in due course.

*Compulsory Disease Pre-Action Protocol*

The Committee considered the procedure contained within a draft Compulsory Disease Pre-Action Protocol. The draft protocol was developed by a sub group, comprising of Committee members Amber Galbraith, Alan Rogerson, Ronnie Conway, Gordon Keyden and Fraser Simpson. These Committee members also nominated Laura Blane (Thompsons Solicitors), Iain Elliot (NFU Mutual), David Tait (Clyde and Co) and John Barrie (Plexus Law) to sit on the sub group. The sub group met several times throughout 2017.

The Committee approved the procedure contained within the draft Compulsory Disease Pre-Action Protocol for submission to the CAFC for the development of a fee structure and, thereafter, Council.

The [Rules Rewrite Committee](#) met on 27 March and considered the following matters:

*Proposals for rules: policy development– Civil jury precepts*

The Committee considered a policy request from SCTS seeking changes to Rule 37.2(1) and (2) of the Rules of the Court of Session to require pursuers to request the issue of a jury precept further in advance of the diet for jury trial than is currently required. The Committee agreed that draft rules be prepared for consideration.



### *Review of Sheriff Appeal Court Rules*

The Committee considered key policy proposals developed by the Sheriffs Principal for amendment of the Sheriff Appeal Court Rules and agreed that draft rules be prepared for consideration at the next appropriate meeting. It was agreed that the secretariat would consult with the Law Society of Scotland, the Faculty of Advocates and the Sheriffs' Association in relation to the proposals with a view to the feedback being considered along with the draft rules.

Next meeting of the Committee: • Tuesday 3 July 2018 at 4.15pm

### **Recent Rules**

#### [Act of Sederunt \(Fees of Messengers-at-Arms, Sheriff Officers and Shorthand Writers\) \(Amendment\) 2018](#)

This instrument was made on 18 April 2018 and comes into force on 04 June 2018.

It makes changes to the rules regulating the fees of shorthand writers, Messengers-at-Arms and sheriff officers.

### **Consultations, publications and other developments of interest**

#### [Consultation on the Simple Procedure Rules](#)

The Council has launched a public consultation as part of its review into how the Simple Procedure Rules are working. It runs until 31 May 2018.



## Feedback

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

**Email**                [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

**Telephone**        0131 240 6781

**Post**                 Scottish Civil Justice Council, Parliament House, Edinburgh, EH1 1RQ

[SCJC website](#)

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This update is produced approximately every two months by the Scottish Civil Justice Council secretariat to provide stakeholders with regular information on the work of the Council and its committees. Meeting dates and latest minutes of the Council and its Committees are available on the [Council's website](#).