



**Scottish
Civil Justice
Council**

**Annual Report 2017/18
and
Annual Programme 2018/19**

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EH1 1RQ

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Foreword

It is a pleasure to introduce the Scottish Civil Justice Council's fifth Annual Report, covering the year to 31 March 2018. Given the extent of the reforms being undertaken, the Council's Annual Report and Annual Programme of Work for 2018-19 have again been published together as much of the work spans both periods.



Throughout this reporting year the Council has continued to support the wider programme of civil court reform. The Council is currently evaluating the user experiences of the 'core' Simple Procedure Rules, before it brings the 'special claim' Simple Procedure Rules into force. The Council is moving ahead with the Rules Rewrite Project, which is designed to consolidate, harmonise and simplify the rules of the civil courts in Scotland. A number of key areas of civil practice are being considered by specialist working groups. The Council is grateful for the support it has received from legal practitioners and other court users in this important project.

Meanwhile, the Council continues to respond to requests for rules to implement new legislation or policy initiatives. The work which the Council has done over the last year can be seen in the Report. New rules, and amendments to existing rules, have been drafted in a diverse range of subject matters, from competition law to human trafficking. No less than 17 sets of draft rules have been prepared and made into law by the Court of Session.

I am grateful, as always, for the unstinting support of the Council's members and members of the Council's committees and specialist working groups. Without that support, none of this could have been achieved. I am grateful also to the Council's secretariat and to the staff of the Lord President's Private Office for their commitment and professionalism over the course of the year.

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 (the 2013 Act). 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.

The Council's functions

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 to the Lord President on the development of and changes to the civil justice system in Scotland.

Guiding principles

Under section 2 of the 2013 Act, 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.

Membership

The composition of the Council is provided for in the 2013 Act. 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:

Category	Position	Name
Chair	The Lord President and Lord Justice General, by virtue of that office	The Right Hon. Lord Carloway
Ex officio members	Chief Executive of the Scottish Courts and Tribunals Service, by virtue of that office	Eric McQueen
	Principal officer of the Scottish Legal Aid Board, by virtue of that office	Colin Lancaster
	1 member appointed by the Scottish Ministers	Gavin Henderson
Judicial members	At least 4 judges including a minimum of:	The Right Hon. Lord Menzies (Deputy Chair)
Appointed by the Lord President	1 judge of the Court of Session, and	The Right Hon. Lord Boyd of Duncansby
	2 sheriffs principal or sheriffs	The Hon. Lord Tyre
		Sheriff Principal Abercrombie QC

		Sheriff Hughes Sheriff Murphy QC
Advocate members Appointed by the Lord President in consultation with the Faculty of Advocates	At least 2 practising advocates	Lynda Brabender QC Kenneth Campbell QC
Solicitor members Appointed by the Lord President in consultation with the Council of the Law Society of Scotland	At least 2 practising solicitors	Joel Conn Elena Fry Jacqueline Harris
Consumer representative members Appointed by the Lord President in consultation with the Scottish Ministers	At least 2 persons who, between them, appear to the Lord President to have— (i) experience and knowledge of consumer affairs, (ii) knowledge of the non-commercial legal advice sector, and (iii) an awareness of the interests of litigants in the civil courts, and	Ian Maxwell Jane Williams
LP members Appointed by the Lord President in consultation with the Scottish Ministers	Up to 6 other persons considered by the Lord President to be suitable to be members of the Council	Employment Judge Joseph d'Inverno Brandon Malone

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 the members above, the following observers attend Council meetings:

Nicola Anderson	Legislation Implementation Team, Scottish Courts and Tribunals Service
Diane Machin	Deputy Principal Clerk of Session, Scottish Courts and Tribunals Service
Craig McCorkindale	Making Justice Work 1 Programme Manager

Committees

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

Committee	Chair	Remit	Date established
Access to Justice	The Hon. Lady Wise	To monitor the effect on access to justice of the operation of the civil justice system; to keep relevant rules under review; to develop and consider proposals for modification and reform and, where appropriate, to draft rules for SCJC consideration.	23 September 2013
Costs and Funding	The Hon. Lord Burns	This Committee's remit is concerned with matters that can be regulated by the Court of Session Rules in civil matters including award of expenses and fees provisions. Relating to these matters the Committee's remit is to keep the relevant rules, tables and fees under review; consider proposed reforms and to put forward recommendations and draft rules when applicable, to the Council.	18 September 2013
Family Law	The Hon. Lord Brailsford	For family actions and cases involving children: to keep the civil rules under review; make proposals for change; require that cases are dealt with expeditiously and efficiently; review, develop and promote a case management structure; report to the SCJC with recommendations and rules; and regard the welfare of children as a paramount consideration.	10 June 2013
Information and Communications Technology	The Hon. Lord Tyre	To consider how ICT can be used effectively within the Scottish civil courts; to make recommendations to the SCJC with regard to initiatives relating to the use of ICT; to review the rules of court and propose reform and draft rules where appropriate.	23 September 2013
Personal Injury	The Hon. Lord Armstrong	In relation to personal injury actions: to keep the relevant civil rules under review; make proposals for change; develop rules relating to action to be taken before proceedings are	23 September 2013

		brought and encouraging fair, just and timely settlement of disputes; make provision for any type of personal injury claim of any value at any stage of proceedings; and report to the SCJC with recommendations and rules.	
Rules Rewrite	The Rt. Hon. Lord Carloway, Lord President Deputy Chair: The Rt. Hon. Lord Menzies	To keep civil rules under review; consider proposals for modification & reform; manage the Rules Rewrite Project (RRP); develop a framework for reviewing new rules prepared under RRP & reforms under the Courts Reform (Scotland) Act 2014; to review arrangements for instructing and drafting rules; to consider issues that do not fall under remit of any other Committee.	10 June 2013

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 Keillor David Ross
Communications Officer	Baktosch Gillan

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

Key achievements and ongoing work

The Council's work can be categorised into four different strands:

- 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 ;
- consideration of potential improvements to procedures which can be taken forward without primary legislation; and
- review of new rules developed by the Council, where the Council has agreed to a review exercise.

Justice System Reform

The Council's current work in this area focuses on four major initiatives:

a) Civil Courts Reform

This continues to be the major focus of the Council's work. Over the last three years, the Council has worked on the implementation of those reforms for which the legislative underpinning was provided in the Courts Reform (Scotland) Act 2014 – such as the Sheriff Appeal Court, the All Scotland Personal Injury Court and judicial review reforms – and implementation of these is now complete. The 'core' Simple Procedure Rules, dealing with actions of payment, are in place, and the Simple Procedure (Special Claims) Rules, which are being developed by the Access to Justice and Personal Injury Committees, have been drafted.

The core Simple Procedure Rules are currently subject to an operational review by the SCTS. The Council is also conducting a review to evaluate the user experience of the Rules. This review includes a public consultation, research and focus groups all seeking to identify any operational or other difficulties before bringing the Special Claims Rules into force. It is anticipated that the amendments to the core rules will be in

place by mid-2019, and the Special Claims rules will be in place by 2020. **The Council's work on Simple Procedure remains a high priority for 2018/19.**

The Council has continued to progress its work in relation to the Rules Rewrite Project; a comprehensive review of the existing Court of Session and sheriff court rules. The Project encompasses many recommendations of the Scottish Civil Courts Review undertaken by Lord Gill. The first stage of the work under the Project is complete. The Council has produced a First Report and engaged with interested parties on its preliminary proposals. A series of public events were held around the country during the summer of 2017. Feedback from interested parties on the proposals was generally positive and has been valuable as part of the overall exercise.

Stage 2 of the Project is the preparation of a detailed model for ordinary procedure in the Court of Session and sheriff court. The model will take the form of a 'procedural narrative' which will be a step-by-step guide to setting out how the Council envisages an ordinary action proceeding through the court. This work has continued throughout 2017-18. A number of working groups have been set up, consisting of Council/committee members together with suitable external experts, where necessary, and have met regularly over the course of the year. Five areas of practice are currently being addressed: 'commencement and initial case management'; 'applications and motions'; 'decrees, extracts and enforcement'; 'evidence, proof and hearings' and 'access to justice'. The Rules Rewrite Drafting Team will continue with the process of putting discussion papers to the working groups for consideration during 2018/19 with a view to drafting the detailed procedural model.

Work stream 6 is not yet established as the proposed approach is to wait for a separate exercise on consolidation of court fees to conclude before the Costs and Funding Committee is asked to consider this work.

This work remains a priority for the Council for 2018/19. The Rules Rewrite Project is being overseen by the Rules Rewrite Committee and the Committee will receive regular reports on progress.

The final tranche of courts reform for the Council is the implementation of the wider recommendations contained in the Scottish Civil Courts Review that can be taken forward without the need for primary legislation. A number of recommendations had previously identified by the Council as priorities and progress summaries are provided below:

- Compulsory pre-action protocols – this work 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 disease and clinical negligence, on the following basis:

Disease A compulsory Disease Pre-action Protocol has been developed by a sub-group of the Committee. The procedure within the draft protocol has been approved by the Committee and will be presented at a future Costs and Funding Committee meeting for the development of an accompanying fee structure. Experience from the operation of the Personal Injury Protocol has been fed into the disease protocol.

Clinical negligence The Personal Injury Committee established a sub-group in 2016 which drafted a compulsory protocol in relation to Clinical Negligence cases. This work was paused to allow for the trial of a voluntary protocol involving NHS National Services Scotland Central Legal Office and some Pursuer firms. The Committee has now agreed that their work on the compulsory protocol should resume and a sub group has been re-established.

- Rules for enforcement/sanctions to ensure adherence to the rules - this was previously noted as a separate piece of work but has now been included in the Rules Rewrite Project as an aspect of the court's case management powers and will be considered by the Costs and Funding Committee in due course.
- Judicial case management in family actions – the Family Law Committee has been considering the operation of Chapter 33AA and the case management of family actions more generally. The Committee commissioned research during 2016/17. A sub-committee was established to consider the conclusions of the research report and some related proposals that were submitted by the Scottish Government. The sub-committee then prepared a report which made several recommendations on how to improve the case management of family actions in the sheriff court. Among other things, the report considers the possibility of introducing different 'tracks', recognising that some family actions are best suited to going straight to proof while others could perhaps be dealt with by a series of child welfare hearings. The Committee is currently consulting on the recommendations. It is anticipated that this work will continue well into 2018-19.
- Alternative Dispute Resolution – this was originally allocated to the Access to Justice Committee to progress and was flagged at the Council's strategy meeting as being a priority for 2017/18. A literature review was undertaken in 2014. However, this matter had been put on hold pending the Committee's work on Simple Procedure and on lay representation. The work, which is restricted to the issue of what the court rules should require or recommend about the promotion of alternative dispute resolution options, is also now included in the Rules Rewrite Project and is being progressed under work stream 5.

There are still a number of recommendations within the Scottish Civil Courts Review that fall within the Council's remit for implementation. In its Annual Programme for

2017/18, the Council noted that further work would require to 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. Some recommendations have been superseded by other pieces of work, most notably a number of the recommendations in Sheriff Principal Taylor's Review of Costs and Funding of Civil Litigation, which have been carried forward into the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, as noted below. **This work will continue as one of the Council's priorities for 2018/19, to be taken along with, but not ahead of, other priorities on the basis that it will be possible to conclude some but not all of these matters during the Programme year.**

b) Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland and the Civil Litigation (Expenses and Group Proceedings)(Scotland) Act 2018

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 implements Sheriff Principal Taylor's recommendations relating to Success Fee Agreements, Qualified One-Way Costs Shifting, expenses against third-party funders, and expenses against legal representatives. It also implements the recommendations of the Scottish Civil Courts Review relating to auditors and group proceedings. A number of provisions in the Act will require consequential provision in rules of court. With the exception of group proceedings, it is anticipated that these will be accommodated in the Council's 2018/19 work programme. The development of rules for group proceedings will be a much more extensive exercise that will place a considerable demand on resources.

The Council has agreed that these rules requests, when they come forward, should be priorities for 2018/19, subject to the proviso that realistic timescales will require to be established for the work involved, and it may not be feasible to conclude all these tasks during the year.

c) Tribunals (Scotland) Act 2014

The 2014 Act makes provision for the Council's functions to be widened to include the Scottish Tribunals. In accordance with the provisions of that Act, the Council will require to set up a Tribunals Committee to deal with this additional work. This will have substantial resource implications for the work of the Council and the secretariat. The Council's secretariat is engaged in discussions with the Scottish Government about the timing of the transfer of rule-making functions to the Council.

d) Brexit related work

Preliminary consideration has been given during 2017/18 to the need to deal with the impact of Brexit – the UK's withdrawal from the EU – on the rules of court. Many of the rules of court give effect to EU measures – for service of documents, recognition and enforcement of decrees, etc. – and amendments will be necessary. Although exit day is to be 29 March 2019, it is possible that there will be a 'transitional period' of up to 2

years, during which EU law will continue to apply. The extent and detail of amendments to court rules will, to a great extent, be dependent upon the nature and timing of the UK's exit from the EU, as will the resources the Council will need to deploy. If urgent amendments to court rules are required, that will have a significant impact on other Council business. If there is a short 'no deal' period within which to put through critical Brexit-related amendments, this work will require to be given a very high priority. **This work will therefore be a priority for the Council during 2018/19.**

Consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules

The Council has an ongoing function to review rules in light of changes in the law, either through new legislation or developments in case law. This can often be reactive work, based on legislative change or recently published decisions, sometimes with short deadlines. As such it is difficult to plan for and it can have a significant impact on existing priorities.

During 2017/18, this function included drafting rules to support the Competition Act 1998, the Human Trafficking and Exploitation Act 2015, the Psychoactive Substances Act 2016; the Immigration Act 2016 and the Digital Economy Act 2017. A full list of the rules made by the Court of Session following submission of draft rules by the Council can be seen in the "[Summary of Rules Prepared](#)" section.

Looking to 2018/19, the Scottish Government consultation on reviewing Part 1 of the Children's Scotland Act 1995 and other family law issues, may involve significant changes to court rules. If so, this will create substantial work for the Council.

The following pieces of legislation are also likely to require court rules:

- Criminal Finances Act 2017
- Investigatory Powers Act 2016
- Child Maintenance and Other Payments Act 2008
- Human Fertilisation and Embryology Act 2008 – Remedial Order
- Modernisation of Insolvency (Scotland) Rules

Turning to developments in case law, the decision of the Inner House in *Farstad AS v Enviroco Limited* was identified as a priority for the Council in its programme for 2017/18. This decision confirmed that the judicial rate of interest, of 8%, should be a starting point for Scottish courts in awarding interest. There were concerns that this rate was much higher than commercial rates and unfair to consumers. **The Council was unable to progress this matter in 2017-18, due to other competing priorities, but it has been marked as a continuing priority for the coming year.**

Consideration of potential improvements to procedures which can be taken forward without primary legislation

One of the Council's key functions is to review current practice and procedure in the courts. Where a shortcoming is identified, the Council can consider proposals for amendment of rules. The Council can also consider changes in response to wider policy initiatives developed by government, general requests for changes to rules, or of its own accord.

In addition to the work undertaken above as part of the wider civil court reform exercise, the Council has made progress with the following areas of work and **these will continue to be priorities for 2018/19**:

Lay representation

This work is being progressed by the Access to Justice Committee. A literature review was also carried out in 2014 on this topic but again the matter had been put on hold pending the Committee's work on Simple Procedure. The Committee has continued this work throughout 2017 and early 2018 and anticipates submitting proposals for reform to the Council in July 2018.

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. This includes the fees of solicitors, messengers-at-arms, sheriff officers, witnesses and shorthand writers.

In addition to the routine maintenance and uprating of regulated fees, the Costs and Funding Committee is currently undertaking a review of the fees of solicitors (as prescribed for the purpose of judicial expenses) with a view to identifying any flaws or other matters of difficulty. A consultation has been undertaken and the Committee is currently considering the responses. Once complete, it has been agreed that a second consultation tranche will be undertaken in relation to fees of messengers-at-arms, sheriff officers, witnesses and shorthand writers. This work will be progressed in 2018.

Expenses and taxation

In July 2016 the Council approved the Costs and Funding Committee's proposed policy for the implementation of recommendations made in Chapters 2 – 4 of the Taylor Review of Expenses and Funding. The Committee has since then been developing draft rules which it proposes to incorporate into a significantly more far-reaching overhaul of the rules regulating the taxation of expenses and the associated tables of fees. It is anticipated that the resultant draft rules will be submitted to the Council for consideration in the course of 2018.

The Voice of the Child

Work has been progressed by the Family Law Committee to improve the method of ascertaining the views of the child in family actions. Public engagement and consultation sessions with children have been carried out and a revamped Form F9 (which intimates the seeking of a section 11 order to the child and seeks the child's views) has been produced. In addition, the Committee is preparing a draft instrument which, for the first time, introduces into rules detailed provision about the timing and procedure of sending a Form F9 to a child. Draft rules are due to be presented to the Council this year.

Digital Reform

With the introduction of SCTS's new integrated case management system (ICMS), it is anticipated that this work stream will gain momentum over the coming year.

Commercial Dispute Resolution

The Council is considering proposals in relation to improving Scotland's attractiveness as a seat of commercial dispute resolution. This work is ongoing.

Review of rules

This was a new tranche of the Council's work for 2017/18 and relates to new rules developed by the Council which it agreed to review at a future date. The Council noted at its strategy meeting in January 2017, that this work is often as time-consuming as the initial development of the rules and that this needs to be reflected in its programme of work.

During 2017/18, the Rules Rewrite Committee reviewed the rules for judicial review and amendments to the rules came into force in July 2017.

At the request of the Sheriffs Principal, the Council agreed to bring forward a review of the Sheriff Appeal Court Rules. The Rules Rewrite Drafting Team has worked with the sheriffs principal to develop proposals which are presently undergoing informal consultation. Feedback from the consultation will be considered by the Rules Rewrite Committee and this work will continue during 2018/19.

New rules were introduced in June 2017 for proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The Council has agreed to review these rules in September 2018, by which time some feedback as to their operational effectiveness should be available. This is likely to be a significant piece of work for 2018/19.

As noted elsewhere, the Council has also agreed to undertake a review of the rules for the core Simple Procedure as well as the Personal Injury Pre-action Protocol.

Although the commitment to the review of new rules remains, where there are competing demands on resources, this work will be progressed as and when circumstances permit.

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.

During this reporting year, 2017-18, the Council made no recommendations.

Summary of Rules Prepared

This section provides details of the draft rules submitted by the Council to the Court of Session during 2017/18 for consideration. It contains rules submitted in relation to all of the Council's work areas described above.

The **Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Competition Proceedings) 2017** was made on 26th April 2017 and came into force on 26th May 2017. It amends various court rules in consequence of recent amendments to the Competition Act 1998 made by the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017. Those Regulations partially implement EU Directive 2014/104/EU relating to actions for damages under national law for infringements of EU competition law.

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Vexatious Actions) 2017** was made on 26th April 2017 and came into force on 1st June 2017. It amends the Rules of the Court of Session 1994 to set out the procedure which will apply when a person who is the subject of an order under the Vexatious Actions (Scotland) Act 1898 ("the 1898 Act") seeks leave to institute legal proceedings. The 1898 Act is now repealed, but a savings provisions ensures that orders made under it will continue to have effect.

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Curators ad litem) 2017** was made on 26th April 2017 and came into force

on 1st June 2017. It amends the rules that apply to the appointment of curators *ad litem* to defenders in certain family actions in the sheriff court and Court of Session. On appointment, the curator *ad litem* will be ordered to lodge in process a report, based on medical evidence, stating whether or not the defender is incapable of instructing a solicitor. A definition of “incapable” is inserted into the rules for this purpose.

The **Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2017** was made on 12th May 2017 and came into force on 15th June 2017. This Act of Sederunt amends the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 to extend its application to simple procedure cases and appeals in the Sheriff Appeal Court.

The **Act of Sederunt (Sheriff Court Rules Amendment) (European Small Claims Procedure and European Order for Payment Procedure) 2017** was made on 30th May 2017 and came into force on 14th July 2017. It amends 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) 2008 to take account of amendments made by EU Regulation 2015/2421 relating to the European Small Claims Procedure and the European order for payment procedure. The amendments include a power for a sheriff to order that a contested European order for payment proceedings may continue as a European Small Claim, if they are within the scope of the European Small Claims Procedure.

The **Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Lay Representation) 2017** was made on 1st June 2017 and came into force on 3rd July 2017. It amends the Rules of the Court of Session, the Sheriff Court Appeal Rules, the Ordinary Cause Rules, the Summary Application Rules and the Summary Cause Rules to extend the role of lay representatives. It provides that the court, in considering whether to grant permission for a lay representative to act for a litigant, must decide whether that is in the interests of justice. It also provides that a lay representative may do anything in the preparation and conduct of the hearing that the litigant may do (e.g. conduct a proof).

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Withdrawal of Agents and Judicial Review) 2017** was made on 13th June 2017 and came into force on 17th July 2017. It amends chapter 30 (withdrawal of agents) of the Rules of the Court of Session (“Rules”) to place additional requirements on agents who withdraw from acting and to allow the Court, on its own initiative, to ordain the party whose agent has withdrawn from acting to intimate whether they intend to proceed. It also amends chapter 58 (judicial review) of the Rules to make various adjustments to the judicial review procedure.

The **Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Regulation (EU) 2015/848) 2017** was made on 14th June 2017 and came into force on 26th June 2017. It amends the Sheriff Court Bankruptcy Rules 2016, the Rules of the Court of Session 1994, the Judicial Factors Rules 1992 and the Sheriff Court

Company Insolvency Rules 1986 to replace references to EC Regulation 1346/2000 on insolvency proceedings, which has been repealed and replaced by EU Regulation 2015/848. References to “member state liquidator” are replaced with references to “member state insolvency practitioner” to reflect the terminology used in the new Regulation.

The **Act of Sederunt (Summary Application Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017** was made on 16th June 2017. It comes into force, in part, on 30th June 2017, and fully on 31st October 2017. It amends the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 (“the 1999 Rules”) in consequence of the Human Trafficking and Exploitation (Scotland) Act 2015. It makes provision for trafficking and exploitation prevention orders and trafficking and exploitation risk orders, and sets out the procedure for applying to vary, renew or discharge a trafficking and exploitation prevention order or a trafficking and exploitation risk order.

The **Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2017** was made on 10th July 2017 and came into force on 2nd October 2017. It amends the Act of Sederunt (Messengers-at-Arms and Sheriff Officer) Rules 1991 to insert a new requirement that an application for commission as a sheriff officer be accompanied by an enhanced criminal record certificate which is no more than three months old at the date of the application, and to replace the requirement) that an application be advertised in newspapers with a requirement that the application be advertised for a period of no less than 28 days on the website of the Society of Messenger-at-Arms and Sheriff Officers.

The **Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Miscellaneous) 2017** was made on 11th July 2017 and came into force on 18th September 2017. It adds new rules to Chapter 49 (Family Actions) of the Rules of the Court of Session 1994 to make provision for a case management hearing and a pre-proof hearing respectively. It also amends the Summary Application Rules 1999 to make provision for interim trafficking and exploitation prevention orders and interim trafficking and exploitation risk orders.

The **Act of Sederunt (Civil Legal Aid Rules Amendment) 2017** was made on 11th October 2017 and came into force on 13th November 2017. It amends the Act of Sederunt (Civil Legal Aid Rules) 1987 by amending the procedure in applications under section 19(1) of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Legal Aid Fund). The new rule requires applicants to complete a prescribed form and send both it and supporting documents to the Scottish Legal Aid Board. Applications for awards of expenses out of the Legal Aid Fund continue to be made by motion, but such motions require to be intimated on the Board, and may be opposed by the Board as if it was a party to the proceedings.

The **Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Illegal Working Orders) 2017** was made on 8th November 2017 and

came into force on 1st December 2017. It amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999. It makes provision for applications connected to illegal working compliance orders under the Immigration Act 2016 to be made by minute in the process of the original order and regulates the procedure for related compensation claims.

The **Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Sittings of the Court) 2017** was made on 23rd November 2017 and came into force on 1st January 2018. It amends the Rules of the Court of Session 1994 to set out when the Court of Session sits. It provides that the Court shall sit throughout the year except during two brief vacation periods at Christmas and Easter. During vacation Court business shall be dealt with either by the vacation judge or, where necessary, a Division of the Inner House.

The **Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Transfer from Lands Tribunal for Scotland) 2017** was made on 20th December 2017 and came into force on 19th January 2018. It amends the Summary Application Rules in consequence of the Electronic Communications Code (Jurisdiction) Regulations 2017. The 2017 Regulations permit functions conferred on the courts by the code to be exercised, for Scotland, by the Lands Tribunal for Scotland. However, regulation 5 of the 2017 Regulations gives the Lands Tribunal for Scotland power to transfer certain specified proceedings to the sheriff court. The Act of Sederunt makes rules relating to the transfer of those proceedings and allows the sheriff to make such orders as he or she thinks fit to secure, so far as practicable, that the cause proceeds in accordance with the Summary Application Rules.

The **Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Drug Dealing Telecommunications Restriction Orders) 2017** was made on 20th December 2017 and came into force on 19th January 2018. It amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 in consequence of the Drug Dealing Telecommunications Restrictions Orders Regulations 2017. It makes new rules making provision for applications for drug dealing telecommunications restriction orders (“DDTROs”), and for the variation, extension or discharge of such orders. It provides that an application for DDTROs must be made and heard without notice being given to an affected person or their legal representative, and heard and determined in their absence. An appeal lies to the Sheriff Appeal Court.

Research

In January 2018 the Council considered and approved a research specification developed by the Access to Justice Committee as part of its ongoing review of the Simple Procedure Rules. The aim of the research is to obtain views from party litigants who have used simple procedure since it commenced in November 2016. In particular, the Committee is interested in the accessibility and usability of the rules and forms. When completed, this research will

help the Committee to identify any changes to the rules, forms or standard orders that should be made to make simple procedure more efficient and accessible.

Consultations

During 2017-18, the Council undertook the following consultations:

Simple Procedure Rules

In February 2018 the Council launched a consultation as part of the Access to Justice Committee's review of the Simple Procedure Rules. The consultation closed on 31 May 2018. All consultation responses are being analysed and considered along with the research exercise mentioned above and any other available evidence to assist the Committee in identifying any changes to the rules, forms or standard orders that can be made to make simple procedure more efficient and accessible.

Review of Fees in the Scottish Civil Courts: Fees of solicitors

The Costs and Funding Committee developed a review programme to ensure that a review of fees is undertaken on a periodic basis and the Council agreed to publicly consult prior to considering draft rules further. The programme framework is set out in two tranches: one for solicitor fees and one for all other fees. In September 2017 the Costs and Funding Committee launched a consultation to obtain views and evidence from interested parties on the fees for solicitors' that can be recovered under an award of expenses made in the Court of Session, Sheriff Appeal Court and sheriff court. The consultation period ran for 8 weeks from 21 September 2017 and closed on 17 November 2017. Nineteen consultation responses were received. Those who responded included bodies within the legal profession (10 responses), representative bodies (8 responses) and one individual response. Responses are being analysed and the Costs and Funding Committee will consider these in due course.

Protective Expenses Orders

The Council launched a consultation on draft rules in March 2017, which concluded in June 2017. Fifteen responses were received and an analysis of the responses was published in October 2017. The Council established a working group, chaired by Lord Malcolm, to consider the policy issues emerging from the consultation and to make recommendations to the Council for revised procedural rules. The working group has reported and work on PEO rules is proceeding.

Summary of Key priorities for 2018/19

Key priorities for 2018/19

Under section 5 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, the Council must prepare an annual plan setting out its objectives and priorities for each yearly period beginning on 1 April before the start of that period (“the programme”) which must be laid before the Scottish Parliament.

As detailed in the preceding pages, the Council has identified seven work priorities for the coming year. These can be summarised as:

- Simple Procedure – review of the core Simple Procedure Rules and extension of those rules for special claims
- implementation of the remaining recommendations of the Scottish Civil Courts Review
- implementation of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018
- Brexit-related amendments
- improvements to court procedures
- review of new rules
- judicial rate of interest.

The remaining Gill recommendations refer to the recommendations of Lord Gill’s Scottish Civil Courts Review. Some of these matters may not be concluded during the programme year, including compulsory pre-action protocols in personal injury cases; judicial case management in family actions; and Alternative Dispute Resolution.

Rules requests received under the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, will be given priority. Depending upon when these come forward, it is unlikely that the Council will be able to conclude all of these tasks in this Programme year.

It is anticipated that the development of rules for group proceedings will be a significant work project.

Any critical Brexit-related amendments that arise will be given high priority.

The various projects and rules requests involving improvements to court procedures will be prioritised. These projects are: Protective Expenses Orders; lay representation; expenses and taxation; regulation of fees; the Voice of the Child; extension of Simplified Divorce to include cases where there are children under 16; Digital Reform; and commercial dispute resolution. Given the volume of work involved, it is unlikely for the Council to be able to conclude all of these tasks in this Programme year.

The Council is committed to the review of new rules it develops which, in the face of competing demands, will be progressed as and when resources allow.

The Council's secretariat will keep the issue of the judicial rate of interest under review.

Future Meetings

The Council meets up to six times per year. Future meeting dates for 2018 and 2019 are:

- Monday 10 September 2018
- Monday 19 November 2018
- Monday 21 January 2019
- Monday 18 March 2019
- Monday 13 May 2019
- Monday 08 July 2019
- Monday 09 September 2019
- Monday 18 November 2019

Governance and Expenditure

Governance

The 2013 Act sets out the statutory framework for the Council and provides 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 a 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. The Council's Standing Orders and membership of the Council and all its committees are published on the Council's website.

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. Once made by the Court of Session, they are considered and reported on by the Delegated Powers and Law Reform Committee of the Scottish Parliament. 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 provides statistical returns to the Commissioner regarding its handling of requests on a regular basis.

The Council is subject to and complies with EU and domestic data protection legislation.

The Council conducts regular reviews of its performance and working arrangements as part of the preparation of its annual report and work programme.

Publications and records management

The Council is listed under Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (“FOISA”). The Council’s [Publication Scheme and Guide to Information](#) was revised in October 2017 to ensure compliance with the new 2017 version of the Commissioner’s Model Publication Scheme.

The Council’s Records Management Plan (‘RMP’) has also been revised to ensure statutory compliance under the terms of the Public Records (Scotland) Act 2011. 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. On that basis, the Council’s RMP has been incorporated into the revised SCTS RMP and a separate Annex has been included for the Council’s records preservation and destruction schedule. The SCTS’s RMP was submitted to National Records of Scotland (NRS) at the end of July 2017. The Council’s RMP is a ‘living document’ and is subject to regular review and updated as required.

Staffing

The staffing complement, which includes the secretariat and legal support from the Lord President’s Private Office, is provided by the Judicial Office for Scotland (a distinct arm of the SCTS, which provides support to the judiciary).

The staffing commitment for 2017/18 was as follows:

Secretariat

Secretary (0.3 Full Time Equivalent)
 Deputy Secretary (Full time)
 Business and Policy Manager (Full time)
 3 Policy Officers (Full time)
 Communications Officer (0.2 Full Time Equivalent)

Lord President’s Private Office

Rules Rewrite Drafting Team: (4.5 Full Time Equivalent solicitors)
 Legal Secretariat (1.8 Full Time Equivalent Solicitors)

The staffing commitment for 2018/19 remains the same. Depending on the outcome of the EU negotiations on Brexit and timescales involved, there may be additional demands of the Council, and on staffing resources for both the Council's secretariat and the Lord President's Private Office.

Summarised Expenditure for 2017/18

The non-staffing resources allocated to the Council during 2017/18 were £65,000 for operating costs.

SCJC Annual Expenditure 2017/18*			
Category	Description	Budget £	Expenditure £**
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.	45,000	3,477
General running costs	General running costs of the Council and Committees (e.g. catering, hospitality, publications, publicity, photocopying, stationery)	13,500	3577
Expenses	Reimbursement of Council and Committee members' travel & subsistence, additional expenditure and financial loss.	2000	921
Recruitment and training	Ongoing recruitment of and training for new Council members.	2000	N/A
TOTAL		65,000	7,975

*The SCJC's staffing budget is administered by SCTS and is not included in this table.

**Only the actual expenditure incurred during the period is shown. Any commitment to spend not yet paid will be recorded as expenditure for the year 2018/19. All figures are rounded up to the nearest £.

Annual budget 2018/19

The Council has been allocated £85,000 for other non-staffing operating costs, as detailed in the table below, during 2018/19 to assist it in carrying out its functions. The Council's budget allocation is subject to review by the SCTS.

SCJC Annual Budget 2018/19		
Category	Description	Budget £
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.	70,000
General running costs	General running costs of the Council and Committees (e.g. catering, hospitality, publications, publicity, photocopying, stationery)	13,000
Expenses	Reimbursement of Council and Committee members' travel and subsistence, additional expenditure and financial loss.	2000
TOTAL		85,000

Communications, freedom of information and engagement

Communications and engagement

The Council continues to promote its work activity to practitioners and users of the civil justice system, and seeks to engage with other justice organisations, both public and voluntary.

The Council's website continues to play a key role in communicating Council activity. All official publications, details of Council and committee meetings, agendas and civil court rules prepared by the Council, are available online. Whenever appropriate, the Council publishes policy papers online. The Council also has a Twitter account which informs followers of the Council's work.

The Council's newsletter, *Update*, is published online every two months and is distributed to interested parties. It provides updates on the work of the Council and its committees.

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 received no requests for information under FOISA in 2017/18.

Working with interested parties

The Council is committed to working with other justice organisations and parties with an interest in the civil justice system. The Council actively seeks to engage with groups and individuals and will draw from their experience through its committees and working groups and through informal and targeted consultation where appropriate.

Further information and contacts

Full information about the Council and its activities are available at www.scottishciviljusticecouncil.gov.uk. The website is updated regularly with news about the Council and provides full details of Council and committee meetings, publications, draft rules under consideration and new rules made.

The Council publishes a newsletter, *Update*, providing information about ongoing work. *Update*, is published around six times per year and can be accessed via the [publications](#) page of the website. 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:

Email	scjc@scotcourts.gov.uk
Telephone:	0131 240 6781
Post:	Scottish Civil Justice Council Parliament House Edinburgh EH1 1RQ

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Scottish Civil Justice Council
Parliament House
Parliament Square
Edinburgh
EH1 1RQ



**Scottish
Civil Justice
Council**

www.scottishciviljusticecouncil.gov.uk