



Scottish
Civil Justice
Council



Scottish Civil Justice Council

Annual Report 2023/2024 and Annual Programme 2024/2025

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Chair's Foreword

It is a pleasure to introduce the eleventh Annual Report of the Scottish Civil Justice Council, covering the period from 1 April 2023 to 31 March 2024.

As the very first meeting of the Council was held in June 2013 an anniversary event was held in the Surgeons Quarter, Edinburgh, in June 2023 as a fitting way in which to mark the first decade of work delivered by members. In line with each previous year, the Council and its committees have continued to progress a range of rules requests in light of new legislation and policy initiatives, with new rules and amendments to existing rules implemented over a broad spectrum of subjects.



During this reporting period seven sets of draft rules instruments proposed by this Council have been given legal effect by the Court of Session. An update report on the transfer of tribunal jurisdictions was also considered as a prelude to the Council taking on the rule making function for tribunals at some future point. In addition the Council progressed a Targeted Consultation on the evolving “Ordinary Procedure Rules” as part of its ongoing work to progress the comprehensive Rules Rewrite. Those draft rules reflected the Procedural Narrative narrating our vision for how a civil action could be progressed more efficiently in future, from the initiation of a new case through to the eventual resolution of the matters in dispute. A series of consultations are to follow in future planning periods as the Rules Rewrite Committee continues to develop a workable set of new rules for implementation in due course.

As always, I am grateful for the support of all Council and Committee members whose dedication and the time they volunteer is absolutely vital to progressing the Council's wide ranging programme of work. I also want to thank the staff within the Council's Secretariat and the staff of the Lord President's Private Office for their hard work and commitment over the course of the year.

**The Rt. Hon. Lord Carloway
Lord President
Chair of the Scottish Civil Justice Council**

About us

Introduction

The Scottish Civil Justice Council was established with effect from 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (*the 2013 Act*).

Under section 2 (1) of that 2013 Act, 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 or 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;
- providing advice and making recommendations to the Lord President on the development of, and changes to, the civil justice system in Scotland; and
- providing advice on any matter relating to the civil justice system that may be requested by the Lord President.

Guiding principles

Under sections 2 (2) and 2 (3) of the 2013 Act, the Council must have regard to the following statutory guiding principles when carrying out its functions:

- the civil justice system should be fair, accessible and efficient;
- the 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. These principles are also incorporated into the individual remits of each Council committee and members must have regard to the principles when formulating rules proposals.

Who we are

Membership

The Scottish Civil Justice Council is to have not more than 20 members, encompassing a range of interests and experiences across the civil justice system. The categories of membership provided for in the 2013 Act are:

Judicial members

- The Lord President (Lord Justice Clerk may deputise) (Chair)
- At least 4 judges, with a minimum of 1 judge of the Court of Session and 1 sheriff principal or sheriff

Standing appointments

- The Chief Executive of the Scottish Courts and Tribunals Service
- The principal officer of the Scottish Legal Aid Board
- 1 member appointed by the Scottish Ministers

Legal members

- at least 2 practising advocates (“advocate members”)
- at least 2 practising solicitors (“solicitor members”)

Other members

- at least 2 persons (“consumer representative members”)
- up to 6 other persons considered by the Lord President to be suitable to be members of the Council (“LP members”).

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	Denise Swanson
Judicial members Appointed by the Lord President	At least 4 judges including a minimum of: 1 judge of the Court of Session, and 2 sheriffs principal or sheriffs	The Hon. Lord Ericht The Hon. Lady Carmichael Sheriff Principal Ross Sheriff McCartney <i>(Was Sheriff Hughes until Sep 23)</i> Sheriff Way
Advocate members Appointed by the Lord President in consultation with the Faculty of Advocates	At least 2 practicing advocates	Catherine Smith KC Fiona Drysdale KC
Solicitor members Appointed by the Lord President in consultation with the Council of the Law Society of Scotland	At least 2 practicing solicitors	Iain MacRae Nicola Irvine <i>(was Jacqueline Harris until Jan 24)</i>
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	Thomas Docherty Vacancy
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	Sheriff Jillian Martin-Brown

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. The following observers attended Council meetings during 2023-24:

Rachel Grant	Legislation Implementation Team, Scottish Courts and Tribunals Service
Chris Fyffe	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:

Committee	Chair	Remit & Functions
Access to Justice	The Hon. Lady Carmichael	This Committee monitors the effect on access to justice and 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.
Costs and Funding	The Hon. Lord Harrower	This Committee is concerned with matters that can be regulated by the Court of Session Rules in civil matters including award of expenses and fees provisions. The Committee keeps the relevant rules, tables and fees under review; It considers proposed reforms and puts forward recommendations and draft rules when applicable, to the SCJC.
Family Law	The Hon. Lady Wise	This Committee is concerned with family actions and cases involving children. It keeps the family law civil rules under review; makes proposals for change; aims to ensure, via court rules and guidance, that cases are dealt with expeditiously and efficiently; reviews, develops and promotes a case management structure; reports to the SCJC with recommendations for change and drafts new rules where required. At its core, the Committee has, as a paramount consideration, the welfare of children.
Personal Injury	The Hon. Lord Weir	This Committee keeps the relevant personal injury civil rules under review; makes proposals for change; develops rules relating to action to be taken before proceedings are 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 for change and new rules where necessary.
Rules Rewrite	The Rt. Hon. Lord Carloway, Lord President	This Committee oversees the management of the Rules Rewrite Project (RRP); develops a framework for reviewing new rules prepared under RRP & reforms under the Courts Reform (Scotland) Act 2014; considers issues that do not fall under remit of any other Committee.

Table of meetings for 2023 – 2024

	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
SCJC meetings		√				√				√		√
Access to Justice Committee	√										√	√
Costs and Funding Committee												
Family Law Committee		√					√		√			√
Personal Injury Committee		√										
Rules Rewrite Committee			√					√				√

In addition to the scheduled meetings, a 10 year anniversary event was held in June 2023

Support

The Scottish Courts and Tribunals Service (SCTS) holds the statutory function for providing the property, services and staff for the Council, under section 62 of the Judiciary and Courts (Scotland) Act 2008. The following table indicates the budgeted level of resources.

Budget 2023/24	
Payroll	£457,053
Supplies and Services	£39,985
Office & Other Costs	£1,200
Travel & Subsistence	£2,000
TOTAL	£500,238

Policy Support:

The Scottish Courts and Tribunals Service (SCTS) provides funding for 7 posts within the secretariat including: 1 Director Strategy, 1 Secretary to the Council, 1 Business Manager, 1 Policy Manager, 2 Policy Officers and 1 Administrative Officer.

Legal Support:

The adhoc legal support for the drafting of rules instruments is provided by the Lord President's Private Office (LPPO).

To provide career development options the LPPO is normally staffed by lawyers seconded from the Scottish Government Legal Directorate (SGLD).

Key achievements and ongoing work

Summary of the new rules made in 2023-24

The following is a summary, by date made, of the seven sets of rules instruments submitted by the Council to the Court of Session during this reporting period.

Court Rules:

- The [Act of Sederunt \(Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment\) \(Attendance at Hearings\) 2023](#) (SSI 2023/168) was made on **31 May 2023** and came into force on 3 July 2023. These new rules support the daily decisions made on whether hearings are heard in person or by electronic means, or as hybrid of the two. The ability to choose the most appropriate option reflects the outcomes from the public consultation undertaken by the Council.
- The [Act of Sederunt \(Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2023](#) (SSI 2023/196) was made on **27 June 2023** and came into force on 2 October 2023. It amended the existing rules on Reporting Restriction Orders in order to reinforce the need for reasons to be given when these orders are made.
- The [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Taxation of Judicial Expenses Rules 2019 Amendment\) \(Telecommunications Infrastructure\) 2023](#) (SSI 2023/223) was made on **9 August 2023** and came into force on 2 October 2023. In situations where there is a consumer awaiting connection and an unresponsive landlord; these rules provide a mechanism for gaining reasonable access under the Electronic Communications Code in order to install telecommunications infrastructure.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Payment and Electronic Money Institution Special Administration\) 2024](#) (SSI 2024/75) was made on **12 March 2024** and came into force on 12 April 2024. These rules provide a 'special administrative procedure' as a precautionary measure, in the unlikely event that any electronic payment institution that was based in Scotland was to get into financial difficulty and put the financial markets at risk.

- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(National Security Prevention and Investigation\) 2024](#) (SSI 2024/75) was made on **19 March 2024** and came into force on 19 April 2024. There is an existing court procedure used in the rare event an application is made by the intelligence services for ‘prevention and investigation measures’ in relation to terrorism under the 2011 Act. This instrument has amended that existing procedure to also cover any equally rare applications seeking ‘prevention and investigation measures’ in regards to national security matters under the 2023 Act.

Fees Rules:

- The [Act of Sederunt \(Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court\) \(Taxation of Judicial Expenses Rules\) \(Amendment\) 2023](#) (SSI 2023/165) was made on **30 May 2023** and came into force on 30 June 2023. These regulated fee tables are used to determine what a party who is successful in a civil action could reasonably expect to recover in an award of expenses. This amending fees instrument updated the unit cost used within the regulated table of fees by 9.75% so that the amounts recoverable reflect the underlying changes in the cost of living. It also made a comparable adjustment to the fee tables that still apply to cases initiated before the use of “unit costs” was introduced
- The [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2024](#) (SSI 2024/41) was made on **7 February 2024** and came into force on 22 March 2024. These rules provided an uplift in the table of regulated fees that fix the rates to be charged by sheriff officers and messengers at arms. The accompanying policy note set out the justifications for making those changes.

Other rules requests closed by letter or report

Tribunal Rules – annual update on the jurisdiction transfers

The Council considered an update report in March 2024 on the progress made with transferring the tribunal jurisdictions listed within the 2014 Act into the new two tier structure. The likely timing for the secretariat to commence the more detailed work on the expected transfer of the tribunals rule making function from the Scottish Government to the SCJC remains pencilled in for the 2026-27 work programme.

Consultations progressed

During this reporting period the Council ran one consultation exercise:

Ordinary Procedure Rules

The requirement for a ‘comprehensive rules rewrite’ is a multi-year programme of reform. This year the Council conducted a targeted consultation between July 2023 and November 2023 to seek feedback on an initial draft prepared for this alternative set of rules. The Analysis of Responses report was published in January 2024 and a series of further consultations will be needed to help shape those new rules. The feedback received from that first consultation in 2023 is supporting the drafting of the next version of these draft rules to support the second consultation that will proceed later in 2024.

Formal Recommendations Made

One of the statutory functions of the Council is to advise and make recommendations on the development of, and changes to, the civil justice system in Scotland. The 2013 Act provides the Council with the power to take such action as it considers necessary or desirable in pursuance of this function¹ and requires a summary of any such recommendations to be included in the Council’s Annual Report².

During the reporting year from 1 April 2023 to 31 March 2024 the Council made no such formal recommendations under Section 3 (2) (f) of the 2013 Act.

¹ Section 3

² Section 5(3)

Annual Programme for 2024/2025

Under section 5 of the 2013 Act, the Council must prepare an annual plan that sets out its business priorities for each financial year, before the start of that period (“the programme”).

The current pipeline of rules requests

As at 1 April 2024, the total pipeline of rules requests formally logged for consideration by the Council consists of 41 items:

COURT RULES (36):

Count	Item	Category	Description
1	F37 / F74	Rules Review	Pre Action Protocol - Personal Injury
2	F72	Rules Review	Withdrawal of Agents (RCS Chap. 30)
3	F77 / A1	Rules Review	Inner House Rules
4	D2	Rules Review	Protective Expenses Orders (PEO's)
1	A2	Modernisation	Rules Rewrite (the New Civil Procedure Rules)
2	-	Modernisation	Simple Procedure Special Claims (SPSC)
3	F5	Modernisation	Lay representation, lay support and party litigants
4	F86	Modernisation	Pre Action Protocol - Clinical negligence
5	F87	Modernisation	Pre Action Protocol – Disease
6	F93	Modernisation	Caveats
7	-	Modernisation	Interveners (<i>consolidated chapter</i>)
8	-	Modernisation	Group Proceedings Part2 (<i>review for an opt out procedure</i>)
1	E10	Other Request	Public Interest Interventions
2	F62	Other Request	Appointment of Assessors (<i>under the Equality Act 2010</i>)
3	F3	Other Request	Extension of Simplified Divorce
4	-	Other Request	Historic Abuse – Nominal Defenders
5	-	Other Request	E-Motions
6	F89	Other Request	Pursuers Offers (<i>for PI cases under £5k</i>)
7	F90	Other Request	Lodging objections in a Diet of Taxation
8	F94	Other Request	Inhibition in execution
9	F95	Other Request	Postal copies (<i>of documents served</i>)
1	B34.B	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 9
2	B34.C	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 10
3	B34.D	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 11
4	B37	Acts	Damages (Investment Returns and Periodical Payments) (S) Act 2019
5	-	Acts	Civil Partnership (Scotland) Act 2020
6	B40	Acts	Children (Scotland) Act 2020
7	B43	Acts	UK Withdrawal from the European Union (Continuity) (S) Act 2021
8	-	Acts	Defamation and Malicious Publication (Scotland) Act 2021
9	B42	Acts	Domestic Abuse (Protection)(Scotland) 2021
10	-	Acts	Coronavirus (Recovery and Reform) (Scotland) Act 2022 – including a - Consultation on options for withdrawing the signet - Consultation on the proposed withdrawal of the walls of court
11		Acts	Child Support (Enforcement) Act 2023
12		Acts	Moveable Transactions (Scotland) Act 2023
13		Acts	Hunting with Dogs (Scotland) Act 2023
14		Acts	UNCRC (Incorporation) (Scotland) Act 2024
15		Acts	Trusts and Succession (Scotland) Act 2024

NEW FEES RULES (2):

Count	Item	Category	Description
2	F86	Fees Review	Fee structure - for Clinical Negligence PAP
3	F87	Fees Review	Fee structure - for Disease PAP

NEW INQUIRY RULES (1):

Count	Item	Category	Description
1	-	Other Request	To seek COPFS views (on the FAI rules)

NEW TRIBUNAL RULES (2):

Count	Item	Category	Description
1	-	Acts	Annual Update - on the jurisdictions transferred (<i>per the 2014 Act</i>)
2		Modernisation	To establish the judicial objectives (<i>for new tribunals rules</i>)

The key priorities for 2024-25

From that total opening balance of 41 rules requests, the Council has taken a clean sheet approach when agreeing the following 8 items as the priorities for the coming year:

Consultations:

- A consultation - on the next draft of the new Ordinary Procedure Rules;
- A consultation - on the extension of simplified divorce;
- A consultation - on Simple Procedure Special Claims (SPSC);
- A consultation – on the proposed withdrawal of the walls of court; and
- A consultation – on the options for the withdrawal of signeting,

Rules instruments to be laid and made:

- Inner House rules;
- Protective Expenses Orders (PEOs); and
- UNCRC rules (*under the United Nation Convention on the Rights of the Child (Scotland) Act 2024*).

Further information and contacts

Full information about the Council and its activities is 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 four 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 on Twitter [@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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