

UPDATE



Scottish
Civil Justice
Council

The newsletter of the
Scottish Civil Justice Council

ISSUE 22: January 21



Welcome to January 2021's edition of the SCJC newsletter.

The Covid-19 pandemic has had a significant impact on the Council's business and resources, however we have adapted to ensure that our key priorities can continue to be progressed. Most significantly, this has included work on a number of key developments which have been progressed since our last update and we are pleased to provide an overview of this work within this newsletter:

- [Council activity](#), ongoing work and meetings
- [New Rules](#)
- [Committee Business updates](#)
- [Appointments](#)

Latest news

New rules [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2020](#) came into force on 01 December 2020.

The rule change means that, from 1st December 2020, if agents or party litigants wish to submit a Simple Procedure claim this will have to be done electronically.

You can [find more](#) information on these developments in this edition and on our [website](#).

Consultations, publication and other developments:

There are currently no open consultations.

The Council welcomes feedback in relation to the practical workings of the rules of court.

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Lord Carloway

Lord President of the Court of Session,
Chair of the SCJC.

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Council Activity

Extraordinary virtual meeting - 9th July 2020

At an extraordinary virtual meeting on 9th July 2020, the Council considered a request from SCTS regarding the mandatory use of Civil Online for simple procedure cases and agreed to the policy in principle. The full minutes of the meeting can be found [here](#).

The Council approved rule changes and submitted a draft instrument to the Court of Session. [The Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2020](#) which was subsequently made by the Court, provides that, from 1st December 2020, if an agent or party litigants wishes to submit a Simple Procedure claim it will have to be done through the SCTS Civil Online system. If agents wish to submit bulk claims, they can make use of the direct digital interface developed by SCTS. Only if a sheriff considers that a claimant could not have submitted their claim by either of these methods (based on an explanation they provide in a note), will alternative means of submitting a claim under the rules be permitted.

The Council agreed that the rule change would be time-limited so it will cease to have effect on 30th September 2021. In order to assess whether or not to retain the rule change after that date, the Council has requested that SCTS provides a report on the operation of the rule change and the digital interface by 30th June 2021.

Business planning meeting – 01 March 2021

The Council will convene a virtual meeting on 01 March 2021 to consider business priorities and planning for 2021/22 as well as the business and resourcing impacts arising as a result of the Coronavirus pandemic.

Minutes of the meeting will be available on the Council's website.

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Council Activity (continued...)

Since the last [update](#) published in September the Council have considered a number of items by correspondence:

- **Chapter 49 RCS:** members were invited to consider and approve the draft rules instrument.
- **Personal Injury Committees appointments and tenures:** members were invited to approve the appointment of Sheriff Fife to the committee.
- **Domestic Abuse (Protection) Scotland Bill Stage 1 Submission:** members were sent a draft submission for information.
- **Access to Justice Committees appointments and tenures:** members were invited to approve the appointment of Fiona Drysdale as an advocate member to the Committee and Gillian Fyfe as a consumer representative to the Committee.
- **Hague Service Convention - Fees Amendments:** Sheriffs Principal Murray and Sheriff Hughes were consulted by the Court of Session under expedited procedures for clearing Brexit Instruments.
- **Hague Choice of Court Agreement etc:** Sheriffs Principal Murray and Sheriff Hughes were consulted by the Court of Session under expedited procedures for clearing Brexit Instruments.

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New Rules

This section details rules that have been approved by the Court of Session and embodied in an Act of Sederunt.

- The [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Hague Service Convention\) \(Amendment\) 2020](#) amends the tables of fees in schedule 1 of the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 and schedule 1 of the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002. The amendments provide fees for messengers-at-arms and sheriff officers for the service of documents in Scotland under the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters which was concluded on 15th November 1965 (commonly referred to as the “Hague Service Convention”). It came into force on IP completion day, i.e. 11pm, 31 December 2020.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2020](#) was made by the Court on 17 December. It amends the Rules of the Court of Session 1994 (the “RCS”), the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 (the “1986 Rules”) and the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (the “2017 Rules”). It also came into force on IP completion day. The amendments made to Chapter 74 of the RCS, the 1986 Rules and the 2017 Rules are in consequence of the United Kingdom’s withdrawal from the European Union.
- The [Act of Sederunt \(Challenges to Validity of EU Instruments \(EU Exit\) \(Amendment\) 2020](#) amends the Act of Sederunt (Challenges to Validity of EU Instruments (EU Exit) in the Court of Session) 2019 ([S.S.I. 2019/328](#)) and the Act of Sederunt (Challenges to Validity of EU Instruments (EU Exit) in the Sheriff Appeal Court and Sheriff Court) 2019 ([S.S.I. 2019/329](#)) (“the two Principal Instruments”). The two Principal Instruments come into force on IP completion day by the operation of paragraph 1 of Schedule 5 of the European Union (Withdrawal Agreement) Act [2020 \(c.1\)](#) (“the Act”). This Act of Sederunt came into force immediately before IP completion day. Paragraphs 2 and 3 amend the two Principal Instruments by substituting “IP completion day” for “exit day” in consequence of the Act and the amendments made to the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 ([S.I. 2019/673](#)) by the Challenges to Validity of EU Instruments (Amendment) (EU Exit) Regulations 2020 ([S.I. 2020/1503](#)).

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New Rules continued ...

- The Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Miscellaneous) 2021 amends Chapter 49 and Chapter 58 of the Rules of the Court of Session. The instrument amends the last day for lodging productions in family actions from 28 days prior to the diet of proof to 56 days prior, and also inserts a provision that lists of witnesses in family actions should be lodged 56 days before the diet of proof. The intention behind these changes is to allow more time for parties to consider the adjustments, witnesses and productions fully, before preparing affidavits in time for proof. The instrument also amends Rule 58.4(7) by extending the time period for sisting in Asylum and Immigration Judicial Reviews from 28 days to 2 months. The purpose of this amendment is to allow agents more time to collate the information required for an application to the Scottish Legal Aid Board, and reduce potential costs for parties who require to make numerous sist applications whilst their legal aid application is considered. It comes into force on 22 February 2021.

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Committee business update

Due to the recent Covid-19 pandemic further committee meetings for 2021 will be scheduled when required. In the interim, matters are being considered by correspondence, to ensure the health and safety of our staff and members.

Costs and Funding Committee

The [Costs and Funding Committee](#) has not met since the last publication of *Update*.

- **Civil Litigation Act (excluding group proceedings) section 8 – QOCS**

A revised rules instrument is currently under consideration by members of the Costs and Funding Committee and the Secretariat expect their views by close of business today (29 January 2021). The instrument will be shared with the Council's Personal Injury Committee prior to issuing it to Council for consideration and approval. Whilst timescales are contingent on members' views, the Secretariat would hope that the instrument can be approved by Council in mid-March. The SCTS has requested that the rules have a 3 month period between making and coming into force in order for them to make changes to their systems.

- **Review of Fees – sheriff officers and messengers-at arms**

The Committee's ongoing work on the review of fees is nearing conclusion in relation the fees of sheriff officers and messengers at arms. In November 2020 the Committee finalised its proposals for a percentage uplift of fees and a rules instrument making amendments to the relevant tables of fees is being drafted. When available the draft instrument will be submitted to the Council for consideration and approval.

Family Law Committee

The [Family Law Committee](#) met 02 November 2020. The committee considered:

- An update from the Scottish Government on legislative developments, such as the United Nations Convention on the Rights of the Child bill and the Civil Partnership (Scotland) Act 2020
- The Children (Scotland) Act 2020 and the potential changes to court rules required in order to implement the Act
- Children's Advocacy in the children's hearings system and potential changes to the Child Care and Maintenance rules of the Sheriff Court.

Next meeting of the Committee: tbc – February 2021

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Committee business update continued ...

The [Access to Justice Committee](#), [Information and Communications Technology Committee](#) and the [Personal Injury Committee](#) have not met since the last publication of *Update*.

Next meeting of the Committees: to be confirmed.

The [Rules Rewrite Committee](#) project is currently suspended due to resourcing issues.

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Appointments



- **Catherine Smith QC** has been appointed to the Council as an advocate member, effective from 03 December 2020. Catherine holds a strong commitment to pro bono work and has diverse experience both within and beyond the law.
- **Sheriff Fife** has been appointed to the Personal Injury Committee, effective from 16 November 2020. Sheriff Fife was appointed as a judicial member to the committee in place of Sheriff McGowan.
- **Fiona Drysdale** has been appointed to the Access to Justice Committee as an advocate member, effective from 15 December 2020.
- **Gillian Fyfe** has been appointed to the Access to Justice Committee as a Consumer Representative member, effective from 15 January 2021. Gillian is currently the Strategic Lead for Strong Communities within Citizens Advice Scotland.

You can view the full membership of the Council and its Committees on our [website](#).