

UPDATE



Scottish
Civil Justice
Council

The newsletter of the
Scottish Civil Justice Council

ISSUE 21: September 20



Welcome to the summer edition of the SCJC newsletter.

A number of key developments have been progressed since our last update and we are pleased to provide an overview of this work within this newsletter:

- [Council activity](#) and ongoing work
- [Recent Rules](#)
- [Secondary Legislation](#)
- [Committee Business updates](#)
- [Appointments](#)

The Covid-19 pandemic has had a significant impact on the Council's business, however we have adapted to ensure that our key priorities could continue to be progressed. Most significantly, this has included the work on new rules to deliver a framework for Group Proceedings in Scotland which came into force at the end of July. In addition, Council convened an urgent meeting last month to consider proposed rules to make online simple procedure claims mandatory in order to support SCTS recovery following the impact of Covid-19 restrictions. Council is pleased to have played its part in these important policy decisions.



Lord Carloway

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

Latest news

New rules implementing [Part 4 of the Civil Litigation \(Expenses & Group Proceedings \(Scotland\) Act 2018](#) came into force on 31 July 2020.

The new rules enables two or more people with the same, similar, or related claims, to raise court proceedings in a single action for the first time in Scotland.

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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Council Activity

Urgent Virtual Meeting – 9th July 2020

The Council convened a virtual meeting to consider an urgent rules request submitted by the Scottish Courts and Tribunals Service (SCTS). The SCTS were looking to make the use of Civil Online mandatory in simple procedure cases, as a means of assisting business recovery as a result of the Coronavirus pandemic.

The Council spoke at length about this proposal and were in favour of the policy in principle, in particular in order to support the current COVID-19 resourcing implications for SCTS. The Council also agreed that any change should be monitored, therefore requested that a report in to the effectiveness of the change be submitted to the Council by June next year. Council did not agree a commencement date for the rule change.

Full minutes of the meeting are available on the Council's website.

Implementation of the Civil Litigation (Expenses and Group Proceedings) (Sc) Act 2018

The Council's work to implement the 2018 Act is progressing well.

Group Proceedings

The Council established a Working Group in January 2020 to take forward the development of court rules for group proceedings under part 4 of the Act. The Working Group's remit was: *"To expedite the consideration of the secondary legislation and other matters required to facilitate implementation of Part 4 of the Civil Litigation (Expenses & Group Proceedings)(Scotland) Act 2018 and to make proposals for draft rules for consideration by the Scottish Civil Justice Council"*.

The Working Group, chaired by Lord Armstrong, undertook a challenging timetable of work encompassing detailed policy development, close liaison with stakeholders and a targeted consultation in order to design a procedural framework. New rules came in to force on 31st July 2020 enabling two or more people with the same, similar, or related claims, to raise court proceedings in a single action for the first time in Scotland. The rules provide an 'opt-in' model for group proceedings.

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Council Activity (continued...)

Sections 8,9 and 11

The Council's Cost and Funding Committee met on the 09 September and considered draft rules relating to the pro bono provisions in section 9 of the Act and awards of expenses against legal representatives, under the provisions of section 11.

Whilst the Committee had previously approved draft rules instruments in relation to Sections 8 and 11 of the Act in 2019, further drafting amendments were subsequently identified and these will be issued to the Committee for further consideration and approval.

The Committee will be considering the revised draft instruments in due course prior to them being submitted to the Council for consideration and approval.

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Recent 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 \(Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment\) \(Proceeds of Crime\) \(No.2\) 2019](#) makes provision for rules to regulate the procedures for new types of court application provided for under amendments to The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) brought about by means of the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018. The rules were made on 27 November 2019 and came into force on 28 December 2019.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Case Management of Certain Personal Injuries Actions\) 2019](#) provides for a number of changes to the operation of Chapter 42A of the Rules of the Court of Session, including a longer period between the closing of the record and the By Order Adjustment Roll hearing (which is re-named as a case management hearing) taking place, as well as a staggered approach for the exchange of information during the 12 week period following the lodging of the closed record. The rules were made on 27 November 2019 and came into force on 01 March 2020.
- [The Act of Sederunt \(Rules of Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment\) \(Reporting Restrictions\) 2020](#) provides that where a judge or court, as the case may be, is considering making a reporting restriction order then an interim order must always be made first. The rules were made on 12 February 2020 and come in to force 01 March 2020.

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Secondary Legislation

This section provides an update on draft rules of court that have been considered by the Council and have been submitted to the Court of Session for consideration.

- *Judicial Review*

On 5 June 2020, the Council approved rules making amendments to Chapter 58 of the Rules of the Court of Session in relation to sists in petitions for Judicial Review. The amendments extend the time period under which a case may be sisted for legal aid from 28 days to two months. It is anticipated that the amendment will result in fewer requests for extension being made to the court. The draft rules instrument has been submitted to the Court of Session for consideration and approval.

- *Rules of the Court of Session: Chapter 42A: Case management of certain personal injuries actions*

In November 2019, the Council approved proposals to amend Chapter 42A of the Rules of the Court of Session 1994. The rules have been developed as a result of operational issues raised by the Court of Session Personal Injury Users Group where it was highlighted that there was insufficient time between the closing of the record and the hearing of the case on the By Order Adjustment Roll. As a result, hearings have often had to be continued to allow parties more time to comply with requests for information, such as the exchange of medical records.

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Secondary Legislation (continued...)

The new approach provides that parties should be more knowledgeable of their respective positions when preparing for Case Management Hearings. It is anticipated that the new structure should facilitate the more efficient exchange of information by parties and a reduction in the number of continuations of hearings.

The new rules came into force on **01 March 2020**. They apply to actions commenced on or after that date and, where directed by the Lord Ordinary, to any actions commenced before then but only after all the parties have been given an opportunity to be heard.

- *Rules of Court of Session: Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court and Sheriff Court Rules Amendment) (Reporting Restrictions) 2020*

The Council approved rules that clarified the procedures regulating the making of court orders which impose reporting restrictions across civil courts in Scotland. The new rules came in to force on **2 March 2020**.

The rules provide that in relevant proceedings, where the court is considering making an order for a reporting restriction, it must first make an interim order and give reasons why the order is being considered.

There are no changes to existing rules regulating the procedure for hearings in these cases. Hearings will take place when required and will permit any interested party with an opportunity to make representations prior to a final order being made.

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Committee business update

The Covid-19 pandemic has had a significant impact on the Secretariat's capacity and Council's business, however we have adapted to ensure that our key priorities could continue to be progressed.

Due to the recent Covid-19 pandemic further committee meetings for 2020 will be scheduled when required. In the interim, matters are being considered by correspondence, to ensure the health and safety of our members and staff.

Access to Justice Committee

The [Access to Justice Committee](#) last met on 03 December 2019 and continued its work on the review of the Simple Procedure Rules. The Committee considered a number of policy/drafting issues that have arisen and provided drafting instructions.

The Committee also considered a rules request from the Scottish Courts and Tribunals Service seeking to make the use of Civil Online mandatory for Simple Procedure actions. SCTS was invited to provide members with further information relating to the request to assist the Committee in its deliberations.

Next meeting of the Committee: to be confirmed.

Costs and Funding Committee

The [Costs and Funding Committee](#) met on 09 September 2019 and 09 December 2019. The Committee considered draft rules relating to the pro bono provisions in section 9 of the Act and awards of expenses against legal representatives, under the provisions of section 11. The Committee considered a preliminary report by Stewart Mullan on the Society of Messengers-at-Arms and Sheriff Officers' proposals for a fees consultation methodology and considered a letter from SMASO responding to the report.

Next meeting of the Committee: to be confirmed.

Family Law Committee

The [Family Law Committee](#) met on 11 November 2019 and 27 January 2020 and considered further proposals for draft rules on the case management of family and civil partnership actions. Work on these rules is progressing well.

The Committee has recently considered and approved a rules request from the Court of Session Family Actions User Group in relation to time periods for adjustment and lodging in Court of Session Family Actions. These draft rules will be submitted to Council for consideration and approval.

Next meeting of the Committee: to be confirmed.

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Committee business update (continued...)

ICT Committee

The [Information and Communications Technology Committee](#) has not met since the last publication of *Update*.

Next meeting of the Committee: to be confirmed.

Personal Injury Committee

The [Personal Injury Committee](#) has not met since the last publication of *Update*.

Next meeting of the Committee: to be confirmed.

Rules Rewrite Committee

The [Rules Rewrite Committee](#) has not met since the last publication of *Update*.

Next meeting of the Committee: to be confirmed.

Appointments



Sheriff Principal Murray has been appointed as a member of the Scottish Civil Justice Council for a period of three years, effective from 20 April 2020, in place of Sheriff Principal Abercrombie.

Robin MacPherson has been appointed as a member of the Costs and Funding Committee, effective from 14 May 2020. Robin was also appointed Temporary Auditor of the Court of Session, Auditor of the Sheriff Appeal Court and Auditor of the All Scotland Sheriff Personal Injury Court in April 2020.

Jessica Flynn became Business Manager to the Scottish Civil Justice Council on 23 March 2020. Jessica supports the effective performance of the Council's business and provides secretariat support to the Council and its committees.

Julia McCombie was Secretary to the Scottish Civil Justice Council from January to August 2020. **Andrew Campbell** is currently acting as temporary Secretary in Julia's absence whilst also continuing his role as Legal Secretary to the Lord President.