



Scottish Civil Justice Council Update – Issue 18: December 2018

Council Activity

Ongoing work

- The Council considered a paper from the Foreign and Commonwealth Office which sought new rules of court in order to implement the Sanctions and Anti-Money Laundering Act 2018. The Act provides that various decisions made under Part 1 of the Act are open to challenge. The Council instructed the preparation of draft rules for handling applications under Section 38 of the 2018 Act, which should be similar to those in Chapter 96 RCS and are to incorporate provisions for the non-disclosure of sensitive material. The Council also agreed that Chapter 101 of the RCS should be revoked, subject to an appropriate savings clause.
- The Council noted a paper which provided members with an update on planning for the potential effect of Brexit on rules of court.

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. The Recent Rules section below details rules that have subsequently been approved by the Court of Session and embodied in an Act of Sederunt:

- *Child Support Rules 1993: Passport Disqualification Orders*: The Council approved draft rules which made procedural provisions for applications to the sheriff to disqualify a non-resident parent from holding or obtaining a UK passport if he or she fails to pay child support maintenance; and amendments to the existing form of order for the disqualification from holding or obtaining a driving licence to provide consistency across both forms.



- *Taxation Rules and Taxation procedure*: The Council approved two draft Acts of Sederunt: a draft *Act of Sederunt (Taxation of Judicial Expenses Rules) 2019*; and a draft *Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019*, the latter subject to an amendment to make it permissible, in the sheriff court and Sheriff Appeal Court, for an extension to the usual period for lodging an account of expenses to be made in advance of the deadline for lodging.

Committee Activity

The [Access to Justice Committee](#) has not met since the last publication of *Update*.

Next meeting of the Committee: Monday 11 February 2019

The [Costs and Funding Committee](#) met on 5 November 2018 and considered the following matters:

- *Justice system reform*:

Courts Reform – Proposals for Rules

The Committee considered its revised draft rules to implement the recommendations of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland with a wider rationalisation of rules regulating expenses allowed on the civil taxation of an account of expenses and associated applications to the court. The Committee approved the two draft instruments (*Act of Sederunt (Taxation of Judicial Expenses Rules) 2019*; and *Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019*) be submitted to the Scottish Civil Justice Council for consideration.



Implementation of Taylor Recommendations

The Committee considered a summary of the implementation of recommendations made in Chapters 2 to 4 of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland, ("Taylor Review"), and agreed that the document be submitted to Council for approval for publication. The Committee also considered the following:

- Block table of fees (Taylor Review recommendations 4, 8 and 10): the Committee noted that consideration of these recommendations will be carried out in conjunction with the rules rewrite project.
- Fixed expenses (Taylor Review recommendations 30 and 32): the Committee proposed that this recommendation 30 should not be taken forward as this is a matter already governed by primary legislation. The Committee agreed recommendation 32 will be considered further at a future meeting.

Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

The Committee was invited to consider its policy for rules of court consequential on Sections 8 (Qualified One-Way Cost Shifting), 9 (pro bono work) and 11 (Awards of Expenses Against Legal Representation) of the Act and agreed that draft rules of court should be prepared and considered at the next appropriate meeting.

Regulation of Fees – review of solicitor's fees

The Committee noted and agreed that the analysis report in respect of the consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors should be submitted to Council for consideration and publication of the report.

Next meeting of the Committee: Monday 4 February 2019



The [Family Law Committee](#) met on Monday 8 October 2018 and considered the following matters:

- *Hearing the Voice of the Child*
The Committee considered draft rules and new Forms for hearing the voice of the child in family and civil partnership actions along with draft guidance for completion of the forms; a number of revisions were instructed and subject to clarification of an issue on a court motion fee chargeable on the Court of Session, the rules were to be submitted to the Council for consideration.
- *Hearing the Voice of the Child – Adoptions and Permanence Orders*
The Committee considered the rules for adoptions and permanence orders and agreed that it is unnecessary to amend the Sheriff Court Adoption Rules and Chapter 67 of the Rules of the Court of Session to include a provision about seeking up-to-date views of the child in long-running adoption and permanence order cases.
- *Child Support Rules – Passport Disqualification*
The Committee considered a draft instrument amending the Child Support Rules to provide for applications to the sheriff to disqualify a non-resident parent from holding or obtaining a United Kingdom passport if they fail to pay child support maintenance. The proposal to amend the Child Support Rules was made by the Department for Work and Pensions and the Office of the Advocate General for Scotland. The passport disqualification power is provided for in Section 27 of the Child Maintenance and Other Payments Act 2008, which is expected to be commenced in late 2018. The draft provisions for passport disqualification mirror the existing rules for driving licence disqualification. The Committee approved the draft rules and agreed that they be submitted to the Scottish Civil Justice Council for consideration and approval.
- *Consultation Report – Case Management of Family and Civil Partnership Actions in the Sheriff Court*
The Committee considered a report about the consultation on the case management of family and civil partnership actions in the sheriff court. The consultation ran from 31 May until 22 August 2018 and 20 responses were received from a range of consultees. Members noted that the responses were not overwhelmingly for or against the recommendations, and that further analysis was required. The Committee agreed that its preferred approach was to reconvene the case management sub-committee or to establish a new sub-group to take forward this work and invited the secretariat to explore whether it would be possible for work to be taken in advance of the next Committee meeting.



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

The [Personal Injury Committee](#) met on 08 October 2018 and considered the following matters:

- *Pre-Action Protocol – Review Methodology*

The Committee considered proposals on a methodology to review the statutory Personal Injury Pre-Action Protocol ('the protocol'), which has been in force since November 2016. The protocol was developed by the Committee in 2016 and sets out the steps which must be followed prior to raising proceedings. The Council generally reviews rules 18 months to two years from commencement to ascertain whether or not the policy intentions of the rules have been met and whether not any amendments may be required. The Committee agreed that an informal methodology should be used to gather feedback on the protocol in the first instance, whereby Committee members should provide the Secretariat with feedback, to include from staff in their organisations where appropriate, in relation to the operation of the protocol.

- *Amendment to Chapter 42A Rules of the Court of Session*

The Committee further considered proposals to amend Chapter 42A of the Rules of the Court of Session 1994 and advised on its preferred policy on a number of specific matters raised by the Central Legal Office (CLO) of the NHS since the last meeting.

The Committee expressed its thanks to the CLO for its helpful views on the draft proposals and agreed that as there were a small number of outstanding issues remaining, including some points raised by the CLO which required further consideration. A meeting should take place between the Rules Rewrite Drafting Team, Secretariat, Amber Galbraith and Maria Maguire QC in early course to discuss these matters, after which the proposals should be brought back before the Committee for further consideration.

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



Recent Rules

- *Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Jury Trials) 2018*
This Act of Sederunt amends Rule 37.2 of the Rules of the Court of Session 1994 to alter the time limits applicable for parties requesting the issue of the jury precept in civil jury trials in the Court of Session. It came into force on 21 September 2018.
- *Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2018*
This Act of Sederunt amends the rules on Protective Expenses Orders ('PEOs') in Scotland. It provides a new process for determination of applications including lodging opposition to applications; makes a related amendment to the provisions for granting PEOs in certain proceedings relating to the environment; provides a new definition of when related proceedings are to be considered as 'prohibitively expensive' to the applicant seeking protection; and provides limits on liability for expenses and for them to be lifted or lowered on cause shown. It also makes provision for circumstances whereby liability for expenses is limited to £500. It came into force on 10 December 2018.
- *Act of Sederunt (Child Support Rules Amendment) (Disqualification) 2018*
This Act of Sederunt amends the Act of Sederunt (Child Support Rules) 1993 to make provision about disqualification from holding or obtaining a United Kingdom passport. This new type of court order is created by provisions inserted into the Child Support Act 1991 by section 27 of the Child Maintenance and Other Payments Act 2008. It will come into force on 21 January 2019.



Consultations, publications and other developments of interest

- [Summary of Responses to the SCJC consultation on the Simple Procedure Rules](#)
The Council has published a summary of the responses to its consultation on the simple procedure rules. There were 25 responses to the consultation on the simple procedure rules, which focused on the operation of the rules, forms and standard orders. Simple procedure came into force on 28 November 2016 and the Access to Justice Committee will consider the responses alongside a research report from the University of Glasgow in relation to party litigant's experiences with Simple Procedure. The Committee will then be in a position to consider making recommendations to the Council for any changes to the simple procedure rules.

Feedback

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

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

[SCJC website](#)

[@ScottishCJC](#)

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