



Scottish Civil Justice Council Update – Issue 7: January 2017

Council Activity – 21 November 2016 meeting

Committee membership

The Council approved the following appointments:

- the appointment of Senga Gracie as SCTS Legislation and Implementation Team alternate member to Access to Justice Committee
- the appointment of Sheriff Principal Stephen to replace Sheriff Principal Abercrombie as the Sheriff Principal member of the Personal Injury Committee
- the appointment of Lord Boyd as the SCJC member of the Personal Injury Committee.

Ongoing work

- Protective Expenses Orders (PEOs) – consultation proposals and draft rules are likely to be considered at the Council's March meeting.
- Counter Terrorism and Security Act 2015 – draft rules are to be considered at the Council's January meeting.
- Simple Procedure Special Claims Rules – this matter is being led by the Access to Justice Committee. At the meeting, the Council considered and approved the timetable for the implementation of simple procedure (special claims); the methodology for consultation on these draft rules; and draft rules for simple procedure (special claims) for the purpose of consultation.
- Fatal Accident Inquiry Rules – this matter is being led by the Council's FAI Working Group. At the meeting, the Council considered and approved the draft consultation rules and the consultation document for issue. The Council agreed that the consultation should run until 23 January 2017.
- Pursuers' Offers – the Council considered and approved draft rules in relation to the establishment of a formal system of pursuers' offers in the Court of Session and in the



sheriff court ordinary procedure. The Council noted that it will be necessary for the applicable table of fees to be amended to include fees for making and considering pursuer's offers. Proposed amendments to the Tables of Fees are due to be considered at the Council's January meeting. It is now intended that both instruments will be made at the same time.

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:

- There are no outstanding matters submitted to the Court of Session for consideration.

Recent Rules

[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(No. 5\) \(Miscellaneous\) 2016](#)

This instrument was made on 23 November 2016 and came into force on 24 December 2016. It amends the Rules of the Court of Session in consequence of amendments made by the Small Business, Enterprise and Employment Act 2015. It also amends the form of jury precept used in the Court of Session, increasing the number of jurors cited from 36 to 50. Finally, it amends the Act of Sederunt (Company Directors Disqualification) 1986 to replace a redundant statutory reference.



Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2016

This instrument was made on 10 November 2016 and came into force on 28 November 2016. It makes miscellaneous amendments to various sheriff court rules.

Paragraphs 2 and 7 correct minor drafting errors in the Ordinary Cause Rules 1993 and the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016.

Paragraphs 3-5 make amendments in relation to the new simple procedure. Paragraphs 3 and 4 amend 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) to make references to simple procedure.

Paragraph 5 amends the Act of Sederunt (Simple Procedure) 2016 to provide that trainee solicitors may act as legal representatives in simple procedure cases and to clarify how a Charge must be formally served before a decision can be enforced.

Paragraph 6 amends the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rule Amendment) (Bankruptcy (Scotland) Act 2016) 2016 to ensure that certain forms in the 2008 Rules continue to have effect in relation to trust deeds executed before 30 November 2016.

Consultation on draft rules by Court of Session

Act of Sederunt (Sheriff Court Rules Amendment) (Electronic Authentication) 2016

This instrument was made on 13 December 2016 and came into force on 15 December 2016. It amends the Ordinary Cause Rule 1993 and the Sheriff Court Bankruptcy Rules to extend electronic authentication to ordinary causes and certain bankruptcy warrants.

Before making the instrument, the Court of Session consulted with Scottish Civil Justice Council in accordance with section 104(5) of the Courts Reform (Scotland) Act 2014 and the Council confirmed that it was content with the approach.



Committee Activity

The [Access to Justice Committee](#) last met on 12 December 2016. Following the Council's approval of the simple procedure consultation proposals, an informal consultation on the draft rules will take place in form of small focus groups in January 2017.

The Committee continues to consider provision for lay representation and is proposing changes to draft rules to allow lay representatives to cross-examine witnesses. Draft rules are to be considered at its April meeting. The Committee is also considering proposals for changes to the current rules on Public Interest Interventions. A paper exploring the issues will be considered at the next appropriate meeting.

The Committee considered a new EU Regulation which amends existing Regulations in relation to European Small Claims Procedure and European Order for Payment as it relates to European Small Claims Procedure. Draft rule changes are to be considered at the next appropriate meeting.

The [Costs and Funding Committee](#) last met on 19 December 2016. The Committee considered and approved revised draft amendments to the Court of Session and sheriff court Table of Fees to take account of the proposed introduction of Pursuers' Offers.

The Committee also considered proposals in relation to undertaking a periodic review of fees, including a programme framework and draft consultation proposal. The Committee agreed a number of revisions to give better effect to the factors previously identified by the Committee to be taken into account when considering fees, including proportionality and stakeholder engagement. A revised consultation document will be considered at the next meeting in January 2017.

The [Family Law Committee](#) last met on 12 December 2016. It continues to consider all issues raised in relation to the hearing of the voice of the child. Engagement is ongoing with a number of organisations who work with children and who are piloting new draft forms prepared by the Committee for the purpose of seeking the views of the child in court



proceedings. Revised draft rules have also been prepared for consideration when the Committee next meets.

The Committee has also considered draft rules in relation to the appointment of curators *ad litem* in family actions and these have been submitted to the Council for consideration at the next appropriate Council meeting.

The commissioned research on case management in family actions is continuing and a number of interviews have taken place. An interim report is expected at the end of January 2017 and will be considered by the Committee at its next meeting.

The [ICT Committee](#) has not met since publication of the last Update. It next meets on 06 February when it will consider a Discussion Paper about ICT in the courts which is being prepared by the Rules Rewrite Drafting Team as part of the Rules Rewrite Project.

The [Personal Injury Committee](#) has not met since publication of the last Update. Work continues in relation to the draft Simple Procedure Personal Injury Rules and informal consultation in the form of a small focus group in January 2017.

The [Rules Rewrite Committee](#) last met on 6 December 2016 and continues work on implementing the remaining areas of the Courts Reform (Scotland) Act 2014 including the review of permission to appeal procedures.

The first stage of the Rules Rewrite Project is ongoing and the Committee has considered a number of policy discussion papers. The Committee will consider a paper on the subject of petition and summons procedure when it next meets.

The Committee has also commenced a review of the rules for judicial review proceedings and for the Sheriff Appeal Court. Informal consultation has and will continue to take place with a range of stakeholders.

The [SCJC Working Group](#) – *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*. The Working Group has not met since publication of the last Update. It next meets on 28 February 2017, when it will consider the responses to the consultation and recommend any revisions to the draft rules as a result. The responses, along with revised draft rules and a draft consultation report, will be placed before the Council for consideration and approval thereafter.



Consultations and other developments of interest

[Consultation on draft Fatal Accident Inquiry Rules](#)

A consultation paper seeking views on the draft rules for fatal accident inquiries was published on 30 November 2016. The consultation closes on 23 January 2017. Consultation responses will be published on the SCJC website after the closing date.

Feedback

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

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[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](#).