



Scottish Civil Justice Council Update – Issue 12: November 2017

Council Membership

Following an open recruitment campaign, two solicitor members were appointed to the Council and took up their three-year posts on 16 October.

The new members are Jacqueline Harris, who has been re-appointed to the post, and Elena Fry, who is a new appointment. Further details can be found on the Council's [website](#).

Council Activity – 2 October meeting

Committee membership

The Council approved the appointment of Antony Jones QC to the ICT Committee for a further three year period from 24 November 2017.

Revision Standing Orders

The Council approved a revision to the Council's Standing Orders to provide that the Council would *normally* meet six times per year, rather than a minimum of six times a year. This follows the July meeting of the Council being cancelled due to insufficient substantive business and was proposed to create flexibility should the situation arise again in the future.

Records management arrangements

The Council approved a revised draft of the Council's Publication Scheme which had been updated in line with changes made to the Model Publication Scheme and Guidance which was produced by the Scottish Information Commissioner on 27 July 2017.

Members also noted ongoing arrangements in relation to the Council's Records Management Plan.



As both documents are living documents, the Council authorised the Secretariat to make future routine revisions to both documents as appropriate, with any non-routine matters referred to the Lord President in the first instance in his capacity as Chair of the Council.

Ongoing work

- Electronic Communications Code – the Council agreed that court rules be drafted for consideration at the next appropriate meeting in relation to the transfer of cases under the Electronic Communications Code from the Lands Tribunal for Scotland to the Sheriff Court.
- Drug Dealing Telecommunications Restriction Orders - the Council agreed that court rules be drafted for consideration at the next appropriate meeting to support the Drug Dealing Telecommunication Restriction Orders Regulations 2017.

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:

- Immigration Act 2016 – the Council considered and approved rules making provision for some procedural matters relating to Illegal Working Compliance Orders.



Recent Rules

[Act of Sederunt \(Civil Legal Aid Rules Amendment\) 2017](#)

This instrument was made on 11 October 2017 and comes into force on 13 November 2017. It amends the Act of Sederunt (Civil Legal Aid Rules) 1987 in relation to applications under section 19(1) of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Legal Aid Fund).

The new Rule requires applicants to give the Scottish Legal Aid Board (the Board) advance notice of intention to apply for an award of expenses out of the Legal Aid Fund by completing a prescribed form and sending both it and supporting documents to the Board.

Committee Activity

The [Access to Justice Committee](#) last met on 9 October 2017. The meeting was not quorate under the SCJC Standing Orders but members agreed to meet to discuss the papers. At the meeting, the members present further discussed lay representation and lay support in the Scottish courts and, in particular, considered the issue of having a unitary definition of lay representation in court rules and what that definition might look like. The Committee continues to work towards making recommendations to the Council by the end of 2017.

The Committee is also considering proposals for changes to the current rules on Public Interest Interventions and a paper exploring these issues in depth will be further considered at the next appropriate meeting.



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

Work continues to progress in relation to combining the implementation of the Taylor recommendations in the Sheriff Court with a wider rationalisation of the rules regulating expenses that fall to be allowed on taxation of an account of expenses and associated applications to the court. An update on this work, being taken forward by the Committee's Working Group, will be provided at the Committee's next meeting in December 2017.

The [Family Law Committee](#) last met on 23 October. It continues to progress work in the following areas:

Hearing the voice of the child in family actions

The Committee continues to consider all the issues raised in relation to the hearing of the voice of the child. Draft forms have been revised in light of the feedback previously obtained and are being considered by a graphic designer to make them more child-friendly and visually appealing. Draft rules are also being prepared to support the introduction of the new forms.

Case management in family actions

Following consideration of the final [research report](#) by Dr Richard Whitecross and Dr Claire Lindsay, the Committee established a sub-committee to consider the recommendations made in the report, alongside proposals about case management made in a [policy paper](#) by the Scottish Government. The sub-committee's report was considered by the Committee at its October meeting. The Committee approved the sub-committee's recommendations and agreed to recommend to the Council that the recommendations be consulted upon at this stage.

Simplified Divorce

The Committee had previously agreed draft rules for consultation in relation to the scope of the procedures for handling simplified divorce and dissolution cases. This work is being progressed jointly with the Scottish Government, who will also be consulting on related measures. At the October meeting, the Committee considered additional policy matters that have arisen and instructed revised draft rules to be considered by correspondence in advance of the consultation being submitted to the Council for approval.



The [ICT Committee](#) next meets on 6 November 2017. It is taking forward work stream 2 of the Rules Rewrite Project, 'Applications and motions', which concerns motions and minutes, interlocutors, transfer and remit of actions, the involvement of third parties (including sist and transference, third party notice, etc), and the recovery of evidence. The Committee will function as a working group to look at the topics within this area and, in doing so, it will look at the overall policy considerations, not just from an IT perspective.

The [Personal Injury Committee](#) has not met since the publication of the last *Update*. It continues to take forward work on the compulsory clinical negligence and disease pre-action protocols. An update on this work, being taken forward by two sub-groups, will be provided at the Committee's next meeting this month.

The [Rules Rewrite Committee](#) last met on 3 October 2017. Work is ongoing in relation to the following matters:

Rules Rewrite Project

Working group meetings are being held to take forward workstreams 1 to 4 under Stage 2 of the Rules Rewrite Project project plan. Full details of the remits and membership of the working groups can be found on the Council's [website](#).

Review of Sheriff Appeal Court Rules

A number of meetings have been held with Sheriff Principal Abercrombie and the Sheriff Appeal Court clerks to discuss what improvements could be made to the Rules. It is anticipated that a paper will be considered at the next committee meeting, setting out the views of the sheriffs principal and the sheriff appeal court clerks.



Consultations, publications and other developments of interest

Consultation on draft rules for Protective Expenses Orders

This consultation was launched on 28 March 2017 and closed on 23 June 2017. The Council has now published its Report on the consultation responses. The Council has established a working group to consider the policy issues emerging from the consultation and to make recommendations to the Council for revised procedural rules. Further details are available on the Council's [website](#).

Consultation on the review of fees of solicitors in the Scottish civil courts

This consultation was launched on 21 September 2017 and closes on 17 November 2017. It seeks views and evidence from stakeholders on the table of fees for solicitors' recoverable under awards of expenses made in the Court of Session, Sheriff Appeal Court and sheriff court.



Feedback

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

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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](#).