



Scottish Civil Justice Council Update – Issue 13: January 2018

Council Activity – 22 November meeting

Committee membership

The Council approved the following appointments:

- Elena Fry to the Costs and Funding Committee
- Campbell Normand to the Personal Injury Committee.

Ongoing work

- Simple Procedure Rules – the Council agreed to bring forward the review of the core Simple Procedure Rules. A methodology for the review is to be developed and presented to the Council in due course.
- Case management in family actions – the Council considered and approved proposals for a consultation to be carried out on the recommendations contained within a report on case management in family actions prepared by the Family Law Committee's sub-committee.

Recent Rules

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Transfer from Lands Tribunal for Scotland) 2017

This instrument was made on 20 December 2017 and comes into force on 19 January 2018.

It makes provision for cases transferred from the Lands Tribunal for Scotland to the sheriff court in consequence of the Electronic Communications Code (Jurisdiction) Regulations 2017.



Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Drug Dealing Telecommunications Restriction Orders) 2017

This instrument was made on 20 December 2017 and comes into force on 19 January 2018.

It amends the Summary Application Rules in consequence of the Drug Dealing Telecommunications Restrictions Orders Regulations 2017. In particular, it makes provision for applications for drug dealing telecommunications restriction orders and for the variation, extension or discharge of such orders, including the provision of standard forms.

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Sittings of the Court) 2017

This instrument was made on 23 November 2017. It sets out when the Court of Session sits, and came into force on 1 January 2018.

In September, last year, the Lord President made Direction No 1 of 2016, under Chapter 10 of the Rules of the Court of Session, making provision to modernise the sittings of the Court by abolishing the summer vacation and term dates.

The replacement Chapter 10 now includes the sitting dates in the body of the Rules themselves, rather than in a separate Direction, allowing court users to see at a glance when the Court is sitting.

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Illegal Working Orders) 2017

This instrument was made on 08 November 2017 and came into force on 01 December 2017.

It amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999. It makes provision for applications connected to illegal working compliance orders under the Immigration Act 2016 (c.19) to be made by minute in the process of the original order.



It also provides that applications for compensation under paragraph 15 of schedule 6 of the Immigration Act 2016 are to be made by minute in the process of the illegal working compliance order. However, where an illegal working closure notice has been cancelled, the application is to be made by summary application.

Committee Activity

The [Access to Justice Committee](#) has not met since publication of the last *Update*. The Committee's last meeting in October was not quorate under the SCJC Standing Orders but members agreed to meet to discuss the papers.

The Committee continues to give consideration to lay representation and lay support in the Scottish courts and, in particular, has recently 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 the year.

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.

In early 2018, the Committee will begin work on reviewing the Simple Procedure Rules to improve the usability and accessibility of the rules.

The [Costs and Funding Committee](#) last met on 04 December 2017 and considered the following matters:

Justice System reform: Courts Reform

The Committee considered the remaining recommendations of the Scottish Civil Courts Review that fall within the Committee's remit (but out-with the scope of the Rules Rewrite Project) and that could be taken forward without the need for primary legislation. The Committee agreed that recommendations 197, 198 and 199 should be considered further.



Justice System reform: Taylor Review

The main focus of the Committee has been 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 the civil taxation of an account of expenses and associated applications to the court. The Committee continues to consider the Working Group's recommendations of draft rules and associated tables of the draft Civil Taxation Rules.

Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

The Committee considered the Bill with a view to identifying which provisions, if enacted, may call for consequential provision in rules of court.

Rules review and implementation procedures: Regulation of Fees

The Committee noted that the consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors closed on the 17 November 2017. Responses will now be analysed formally and a paper provided for the Committee to consider at the next meeting.

The [Family Law Committee](#) has not met since publication of the last *Update*. 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. It is anticipated that revised forms and rules will be considered by the Committee when it next meets in February 2018.

Case management in family actions

Following approval by the Council, the Committee will be preparing to consult on the sub-committee's recommendations at this stage.

Simplified Divorce

Following consideration of additional policy matters at its October meeting, the Committee will consider revised draft rules in advance of the consultation being submitted to the Council for approval.



The [ICT Committee](#) met on 6 November 2017 and considered initial papers under 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. As noted previously, the Committee is functioning as a working group to look at the topics within this area, and is looking at the overall policy considerations, not just considering matters from an IT perspective.

The [Personal Injury Committee](#) last met on 13 November 2017. At the meeting the Committee received an update on the compulsory clinical negligence and disease pre-action protocols by the sub group chairs. The Committee also discussed potential amendments to Chapter 42A of the Rules of the Court of Session to improve efficiency and a supplementary paper will be prepared by the secretariat for consideration at the next appropriate meeting.

The [Rules Rewrite Committee](#) has not met since publication of the last *Update*. Work continues to progress in relation to the review of the Sheriff Appeal Court Rules and a paper is due to be considered at the next committee meeting, setting out the views of the sheriffs principal and the sheriff appeal court clerks.

A number of working group meetings have been held to take forward work streams 1 to 4 under Stage 2 of the project plan for the Rules Rewrite Project, with further meetings scheduled for 2018.

Consultations, publications and other developments of interest

[Consultation on the review of fees of solicitors in the Scottish civil courts](#)

This consultation was launched on 21 September 2017 and closed on 17 November 2017. It sought 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. The [responses](#) have now been published and will be analysed in due course.

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](#).