



Scottish Civil Justice Council Update – Issue 14: March 2018

Council Activity – 22 January meeting

Committee membership

The Council approved the following appointments:

- Andrew Henderson to the Costs and Funding Committee
- Summary Sheriff Jillian Martin-Brown to the Access to Justice Committee
- SCTS Court of Session observers for all committees.

Ongoing work

- A scoping exercise is being undertaken by the Lord President's Private Office to assess the implications of Brexit on rules of court.
- The Council considered draft rules amending the core Simple Procedure Rules in relation to recall proceedings. Following discussion, it was agreed that these would be considered further by the Rules Rewrite Drafting Team and two of the judicial members of the Council with a view to presenting an amended draft to the full Council for consideration.

Recent Rules

There have been no recent Rules since the last Update was published.



Committee Activity

The [Access to Justice Committee](#) met on 5 February and considered the following matters:

Lay Representation and Lay Support

The Committee continues to consider lay representation and lay support in the Scottish courts and has now agreed its list of recommendations that it wishes to make to the Council. The Secretariat is currently preparing a draft report in relation to these recommendations, which the Committee will be asked to approve in due course.

Improving Scotland's Attractiveness as a Forum for Commercial Dispute Resolution

The Committee also further considered proposals for Improving Scotland's Attractiveness as a Forum for Commercial Dispute Resolution. The Committee discussed the paper prepared by Brandon Malone and agreed that whilst it remained supportive of Alternative Dispute Resolution, it did not feel that it could offer meaningful comment on the proposals due to their specialist and commercial nature. The Committee agreed, however, that it would welcome the opportunity to comment on some of the proposals once they had been more fully developed.

Finally, the Committee discussed the progress of the Civil Online portal and noted its ongoing interest in the project. The Committee were interested in receiving an update on the development of the portal and instructed the Secretariat to write to Craig McCorkindale, Director of Civil Court Reform at the Scottish Courts and Tribunals Service, seeking a formal update on the project.

The [Costs and Funding Committee](#) met on 29 January 2018 and considered the following matters:

Justice System reform: Taylor Review

The Committee's main focus 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 considered and approved the remaining proposals of the Working Group's draft rules and associated tables of the draft Civil Taxation Rules that were not considered at the December 2017 meeting. The proposal of the abolition of the process fee to be absorbed into the other charges on a cost-neutral basis and remaining items on the drafting notes were approved by the Committee. The rules will be revised further for consideration at a future meeting.

Simple Procedure expenses

The Committee considered the implications of the judgment in [Graham v Farrell](#) in relation to expenses in simple procedure cases. As the issue arises from provision contained within the Courts Reform (Scotland) Act 2014, and is not one that can be addressed by rules of court, the Committee agreed to raise the matter with the Council.

Rules review and implementation procedures: Regulation of Fees

Initial scrutiny of the responses to the Committee's consultation on the 'Review of Fees in the Scottish Civil Courts: Fees of solicitors' was considered. Nineteen consultation responses were received and the Committee agreed that the four key areas identified should be considered further:

- hourly rate and other miscellaneous issues
- commercial actions
- personal injury actions
- fixed fees.

Request for increase in fees from SMASO

The Committee agreed to recommend to the Council that the fees of sheriff officers and messengers-at-arms be increased pending the formal review of their fees.



The [Family Law Committee](#) last met on 5 February 2018 and considered the following matters:

Proposals for Rules: Extension of Simplified Divorce and Dissolution

The Committee considered and approved for submission to the Council revised draft rules and a revised draft consultation document in relation to the extension of simplified divorce and dissolution for cases involving children under 16. It was noted that the consultation has been drafted on the basis that it will be launched to coincide with the Scottish Government's consultation on a draft order under section 8(4) of the Civil Evidence (Scotland) Act 1988 – the making of such an order being a pre-requisite of the extension of the simplified procedure.

Hearing the voice of the child in family actions

The Committee considered an illustrative draft instrument inserting into the rules the new forms that will replace Forms F9, CP7 and 49.8-N and making some ancillary changes to the rules relating to hearing the voice of the child in family action. The Committee agreed to consider a revised draft by correspondence in advance of it being expanded to include provision about Chapter 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session. It was also agreed that further work would be undertaken in relation to the development of guidance to accompany the form.

Child welfare hearings in the sheriff court

The Committee considered a report submitted by the Scottish Courts and Tribunals Service about the structure of hearings in family and civil partnership actions at child welfare hearings in the sheriff court, in particular protection of parties when the court is made aware of domestic abuse or violent conduct being alleged or proved in a case. This report was produced in response to questions raised at the October Committee meeting. Members agreed that there did not appear to be a widespread problem and noted the lack of motions being made to the court.



The [Personal Injury Committee](#) has not met since publication of the last *Update*. It continues to progress work on the compulsory clinical negligence and disease pre-action protocols by the sub group chairs. Following discussions at the last meeting, the Committee will consider potential amendments to Chapter 42A of the Rules of the Court of Session to improve efficiency at its 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. Work stream 5 has also been established with a remit to consider representation and lay representation, lay support, the withdrawal of agents, charges to pay, time to pay and alternative dispute resolution and will meet in April 2018.

The Protective Expenses Orders working group met on 10 January 2018 to consider the policy issues emerging from the consultation and will report its recommendations to the Council for revised procedural rules.

Consultations, publications and other developments of interest

[Consultation on the Simple Procedure Rules](#)

The Council has launched a public consultation as part of its review into how the Simple Procedure Rules are working. It runs until 31 May 2018.



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

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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 C-ommittees are available on the [Council's website](#).