



## Scottish Civil Justice Council Update – Issue 17: September 2018

### Council Activity

#### Ongoing work

- The Council has published its [Annual Report 2017-18](#) and Annual Programme of Work for 2018-19, which details how it will deliver its priorities for the next reporting year.
- The Council further considered a discussion paper on ‘Improving Scotland’s Attractiveness as a Forum for Commercial Dispute Resolution’. In relation to proposal 2 (limiting rights of appeal without leave in commercial actions), having considered statistics on the numbers of appeals in Court of Session commercial actions, members agreed that no action was required at this time. In relation to proposal 7 (establishing an English/ Common law court or an international court) and proposal 8 (establishing an international dispute resolution forum), members noted that guidance aimed at encouraging the prompt disposal of actions for enforcement of an adjudication decision, including timescales for issuing judgments, is expected to be issued in autumn 2018. Members declined to take forward proposals to establish an English/ Common law court or an international court, or an international dispute resolution forum, on the grounds that the Council does not have the power to do so.
- Having agreed to submit rules to the Court of Session for approval in relation to applications for protective expenses orders in environmental proceedings, members agreed to consider a paper offering views on provisions for protective expenses orders in non-environmental actions at the next appropriate meeting.
- The Council considered a report by the Access to Justice Committee setting out recommendations following its review of lay representation and lay support in the Scottish courts. Subject to the observation that draft rules should avoid creating a right of audience for lay representatives, members approved the recommendations and remitted the matter back to the Access to Justice Committee for the preparation of draft rules.



## 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:

- Protective Expenses Orders - the Council approved draft rules concerning applications for protective expenses orders ('PEOs') in environmental proceedings, which were prepared to reflect the considerations of the Protective Expenses Orders Working Group.
- Immigration Act 2016 - the Council considered a policy proposal from the UK Government and approved new rules of court in order to implement the sections of the Immigration Act 2016 relating to Labour Market Enforcement Orders ('LMEOs').

## Committee Activity

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

Next meeting of the Committee: Monday 26 November 2018.

The [Costs and Funding Committee](#) met on 23 July 2018 and considered the following matters:

- *Justice system reform: Courts Reform – Proposals for Rules*  
The Committee considered two draft Acts of Sederunt: Act of Sederunt (Taxation of Judicial Expenses Rules); and Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses). The Committee agreed further amendments to both instruments, which, following approval, will be submitted to the Scottish Civil Justice Council for consideration.

Next meeting of the Committee: Monday 5 November 2018



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

Next meeting of the Committee: Monday 8 October 2018

The [Information and Communications Technology Committee](#) met on 27 August 2018 and considered the following matters:

- *European Network of Councils of the Judiciary – Digital Justice Forum*  
The Committee considered the report of the first seminar of the Digital Justice Forum of the European Network of Councils for the Judiciary. The Committee noted the scope of the work to be undertaken by the Digital Justice Forum and agreed that the question of identity assurance in online courts would be a suitable issue for the Forum to consider.
- *Computer Evidence in the Sheriff Courts*  
The Committee considered the Act of Sederunt (Computer Evidence in the Sheriff Court) 1969 (as amended) and agreed that it should be revoked. The Act of Sederunt sets out specific rules that must be followed by any party who wishes to rely on a statement contained in a document produced by a computer. The Committee considered that the Act of Sederunt is no longer of practical value given that the vast majority of documents in civil proceedings in the sheriff court are now produced by a computer.

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

Next meeting of the Committee: Monday 8 October 2018



The [Rules Rewrite Committee](#) met on 3 July 2018 and considered the following matters:

- *Justice System Reform – Rules Rewrite Project update*  
The Committee was informed of progress on the work streams under Phase 2 of the project; the working groups under work streams 1 to 5 have had regular meetings to develop the procedural narratives. It is anticipated that work under work stream 6 on expenses and taxation will commence after the Costs and Funding Committee has concluded its current work on the civil taxation rules.
- *Proposals for Rules: Review of Sheriff Appeal Court Rules*  
The Committee considered key policy proposals developed by the Sheriffs Principal for amendment of the Sheriff Appeal Court Rules and agreed that draft rules be prepared for consideration at the next appropriate meeting. It was agreed that the secretariat would consult the Law Society of Scotland, the Faculty of Advocates and the Sheriffs' Association, and seek feedback on the proposals.

## Recent Rules

- No rules have been made since the publication of the last *Update*.

## Consultations, publications and other developments of interest

- [Simple Procedure research](#) - As part of the Access to Justice Committee's review of the Simple Procedure Rules, the Council has commissioned the University of Glasgow to carry out research into the experiences of people without legal representation who have used Simple Procedure. The purpose of this research is to gather information about how well party litigants in the sheriff court are able to use the Procedure.
- [Consultation on the case management of family and civil partnership actions in the sheriff court](#) – The Family Law Committee's consultation closed on 22 August 2018. Eighteen responses have been received and will be considered 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](mailto:scjc@scotcourts.gov.uk)

**Telephone** 0131 240 6781

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[SCJC website](#)

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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](#).