



Scottish Civil Justice Council Update – Issue 19: April 2019

Council Activity

Appointments

- Joel Conn has been re-appointed to the Council for a further period of three years, effective from 28 May 2019. He will also sit on the Access to Justice and Rules Rewrite Committee and his term on these committees will run concurrently with his time on the Council.
- Alison Reid has been appointed to the Family Law Committee, for a period of three years, effective from 21 January 2019.

Ongoing work

- The Council considered and approved the publication of a summary of recommendations in Chapters 2 - 4 of Sheriff Principal Taylor's review of expenses and funding of civil litigation in Scotland. The report "Review of Fees in the Scottish Civil Courts: Fees of solicitors" has now been published on the [Council's website](#).
- The Council agreed to postpone work on the Rules Rewrite Project at its meeting on 21 January 2019. Work is expected to be delayed until January 2020. This decision was taken as a result of staff vacancies which arise in the Rules Rewrite Drafting Team which cannot be filled meantime. It is not envisaged that the delay will impact upon the project's overall delivery.
- The Council considered a request made by the Court of Session Asylum and Immigration User Group seeking a change to court rules to permit a solicitor to sign a petition or answers in lieu of counsel in certain circumstances. The Council instructed draft rules to be prepared for consideration in due course.
- The Council considered a joint policy proposal from the Accountant in Bankruptcy in Scotland and the Insolvency Service in England, for new court rules in order to implement new legislation regulating insolvency proceedings. Following Council's consideration and approval of the draft rules, they were made on 06 March 2019 and came into force on 06 April 2019.



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.

- *Criminal Finances Act 2017*: The Council approved draft rules, developed by the Council's Rules Rewrite Committee, which make rule changes necessary to implement the provisions of the Criminal Finances Act 2017 regarding civil recovery proceedings in Scotland and makes provision for a number of new types of applications to come before the civil courts.
- *Simple Procedure Amendment)(Civil Online)*: The Council approved draft rules making changes to Simple Procedure Form 4A (response form) and Form 6A (notice of claim) in order to flag to respondents in Simple Procedure claims that they can respond to a claim online using the Civil Online portal on the SCTS website.
- *Hearing the Voice of the Child*: The Council approved draft rules, developed by the Family Law Committee, which amend Chapters 33 and 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session and introduce improved and redesigned versions of the forms for intimation and seeking the views of the child in family and civil partnership actions. The rules are intended to bring procedural clarity to how forms F9, CP7 and 49.8-N are used.

The Council has also produced and published [guidance](#) for practitioners on the use of the new forms.

The Recent Rules section below details new rules that have been approved by the Court of Session and embodied in an Act of Sederunt.



Recent Rules

- The [Act of Sederunt \(Computer Evidence in the Sheriff Court\) \(Revocation\) 2019](#) revokes, so far as still in force, the Act of Sederunt (Computer Evidence in the Sheriff Court) 1969 and the Act of Sederunt (Computer Evidence in the Sheriff Court Amendment) 1970. The rules were made on 30 January 2019 and came into force on 05 March 2019.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Regulation \(EC\) No. 44/2001\) Transitional Provisions\) 2019](#) amends the application of Part V of Chapter 62 of the Rules of the Court of Session on the recognition, registration and enforcement of foreign judgments. The rules were made on 11 March 2019 and came into force on 28 March 2019.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Sanctions and Anti-Money Laundering\) 2019](#) makes rules provision for handling applications under Section 38 of the Sanctions and Anti-Money Laundering) 2018. The rules were made on 26 February 2019 and came into force on 29 March 2019.
- The [Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment\) \(Taxation of Judicial Expenses\) 2019](#) amends the rules of procedure governing the taxation of accounts of expenses in civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court. The rules were made on 27 February 2019 and come into force on 29 April 2019.
- The [Act of Sederunt \(Taxation of Judicial Expenses Rules\) 2019](#) frames the relevant tables of fees to provide for unit-based charging. In particular it makes provision regarding the taxation of accounts of expenses as between party and party in civil proceedings; the reimbursement of losses and expenses incurred by witnesses cited to attend court in such proceedings; the fees payable to shorthand writers and transcribers in relation to such proceedings and the sums chargeable against a debtor in respect of the work of a solicitor in instructing steps in diligence. The rules were made on 27 February 2019 and come into force on 29 April 2019.



- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2019](#) amends various sets of court rules in consequence of changes in insolvency legislation and makes provision about the application procedure for certain related court remedies. The rules were made on 06 March 2019 and come into force on 06 April 2019.
- The [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2019](#) amends the Act of Sederunt (Simple Procedure) 2016 to include references on the response forms to the *Civil Online* portal on the Scottish Courts and Tribunals Service website. From 25 April 2019, respondents will be able to complete a response form through *Civil Online*. The rules were made on 28 March 2019 and come into force on 25 April 2019.
- The [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules Amendment\) \(Labour Market Enforcement Orders\) 2019](#) amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999. It makes provision for applications for labour market enforcement orders under section 19 of the Immigration Act 2016 (c.19) to be made by summary application and for applications for their variation or discharge to be made by minute in the process of the original order. The rules were made on 17 April 2019 and come into force on 18 May 2019.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Child Care and Maintenance Rules 1997 Amendment\) \(Parental Orders\) 2019](#) amends the Rules of the Court of Session 1994 and the Act of Sederunt (Child Care and Maintenance Rules) 1997 in consequence of the coming into force of section 54A of the Human Fertilisation and Embryology Act 2008. The rules were made on 24 April 2019 and come into force on 24 May 2019.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment\) \(Views of the Child\) 2019](#) inserts new forms that are used to seek the views of a child in a family and civil partnership action and makes detailed rules provision about the procedure to be followed when sending one of these forms to a child. The forms replace existing Forms F9 and CP7 in Chapters 33 and 33A respectively of the Ordinary Cause Rules and Form 49.8-N in Chapter 49 of the Rules of the Court of Session. The rules were made on 28 March 2019 and come into force on 24 June 2019.



- The [Act of Sederunt \(Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment\) \(Proceeds of Crime\) 2019](#) makes provision for rules to regulate the procedures for new types of court application provided for under amendments to ACSA and POCA introduced by the Criminal Finance Act 2017. The rules were made on 24 April 2019 and come into force on 01 June 2019.

Committee Activity

Access to Justice Committee

The [Access to Justice Committee](#) last met on 29 April 2019 and continued its work on the review of the Simple Procedure Rules. The Committee considered an options paper drawing together the consultation responses, the research of Professor Tom Mullen and the outputs from an SCTS operational review. The Committee agreed a number of rule changes and amendments to forms were appropriate and agreed to various matters, which will not be taken forward. The Committee reconsidered the use of focus groups taking into account proportionality and it is content not to recommend taking them forward.

The Committee also instructed draft rules to be prepared making discrete amendments to a number of simple procedure forms to highlight that forms can be uploaded via the SCTS *Civil Online* portal. Due to time constraints, these rules were passed straight to Council for consideration. These rules were subsequently made (see details in *New Rules* section above - [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2019](#)).

Costs and Funding Committee

The [Costs and Funding Committee](#) met on 4 February 2019 and considered the following matters:

Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

The Committee considered draft rules to implement sections 8 and 11 of the Act relating to *qualified one-way cost shifting* and *awards of expenses against legal representation*. The



Committee agreed to share the draft instrument in relation to section 8, with the Personal Injury Committee PIC for comment, prior to it being issued to Council for consideration.

Family Law Committee

The [Family Law Committee](#) case management sub-group reconvened on 14 January 2019 and considered the responses from the consultation on case management in family proceedings in the sheriff court. The Family Law Committee met on 25 March 2019 and considered a detailed note of the sub-group's discussions and recommendations. The Committee instructed draft rules to be prepared.

ICT Committee

The [Information and Communications Technology Committee](#) has not met since the last publication of *Update*.

Personal Injury Committee

The [Personal Injury Committee](#) met on 01 April 2019 and considered the following matters:

Amendment to Chapter 42A Rules of the Court of Session

The Committee further considered proposals to amend Chapter 42A of the Rules of the Court of Session 1994 and agree the next steps for taking the work forward.

The Committee agreed that the rules would be considered by a sub-group which will also consider an amended draft Practice Note for Chapter 42A cases, and whether it will be also be appropriate for the equivalent Sheriff Court Rules (Chapter 36A of the Ordinary Cause Rules) to be amended.



Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

The Committee was invited by the Costs and Funding Committee to consider draft rules of court on Sections 8 (Qualified One-Way Cost Shifting) and 11 (Awards of Expenses Against Legal Representation) of the Act. The Committee was content in principle with agreed to the draft rules in principle, subject to an minor amendments making provision of recovery of post tender expenses only.

Rules Rewrite Committee

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

Consultations, publication and other developments of interest

There are currently no open consultations.



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 four 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](#).