



Scottish Civil Justice Council Update – Issue 20: October 2019

Council Activity

Appointments

- Four judicial members have been appointed to the Council. The new members, Lady Carmichael and Sheriff Way, have taken up their three-year posts on 01 July 2019. The Right Hon. Lord Boyd of Duncansby and Sheriff Principal Abercrombie QC have been reappointed to the Council for a further period of three years, effective from the 15 April and 28 May 2019 respectively. Lord Boyd of Duncansby will sit on the Personal Injury Committee and the term on this committee will run concurrently with his time on the Council.
- The Family Law Committee is now chaired by Lady Wise with effect from 08 July 2019; Lady Carmichael replaced Lady Wise as chair of the Access to Justice Committee.
- Membership reappointments made by the Lord President are Brandon Malone and Judge d’Inverno, who have been reappointed to the Council for a further period of three years, effective from 28 May 2019. Mr Malone will sit on the Information and Communication Technology Committee and Judge d’Inverno on the Access to Justice Committee. Their term on these committees will run concurrently with their time on the Council.
- Advocate member, Lynda Brabender QC, has been reappointed to the Council for a further period of three years, effective from 28 September 2019. She will also sit on the Family Law Committee and the term on this committee will run concurrently with her time on the Council.
- Dean Purdie has been reappointed to the Access to Justice and Rules Rewrite Committee, for a period of three years, effective from 03 June 2019.
- Sheriff Principal Turnbull has been reappointed to the Access to Justice Committee, for a period of three years, effective from 02 October 2019.
- Rachael Kelsey has been reappointed to the Family Law Committee, for a period of three years, effective from 03 June 2019.



- Sheriff Principal Murray has been reappointed to the Information and Communication Technology Committee, for a period of three years, effective from 11 July 2019.
- Gavin MacColl has been reappointed to the ICT Committee, for a period of three years, effective from 23 September 2019.
- Ronald Conway, Gordon Keyden, Alan Rogerson and Fraser Simpson have been reappointed to the Personal Injury Committee, for a period of three years, effective from 10 June 2019.
- Amber Galbraith and Maria Maguire QC, have been reappointed to the Personal Injury Committee, for a period of three years, effective from 26 June 2019.
- Sheriff Stoddart and Alan Rogerson, have been reappointed to the Costs and Funding Committee, for a period of three years, effective from 19 November 2019 and 19 December 2019 respectively.
- Sheriff Principal Stephen QC has been reappointed to the Personal Injury Committee, for a period of three years, effective from 21 November 2019.
- A new consumer member, Thomas Docherty, has been appointed to the Council for a period of three years, effective from 07 October 2019.



Ongoing work

- *Scottish Civil Justice Council Annual Report and Programme*

The Council has [published](#) its Annual Report 2018/2019 and Annual Programme of Work for 2019/20, which details how it will deliver its priorities for the next reporting year.

- *Brexit*

The Council has noted previously that a comprehensive scoping exercise of the court rules has been carried out by Lord President's Private Office ("LPPO") to identify whether there are any issues within the court rules requiring to be addressed as a result of the UK's proposed withdrawal from the EU. This exercise has shown that not many amendments to the court rules must be in place by Exit Day. One area where amendments are required to be in place on Exit Day concern the matter of challenges brought in UK courts under the EU withdrawal legislation on the basis that immediately before Exit Day an EU instrument was invalid. Court rules have been made making such provision. More substantive reform of the court rules will be required in due course should the UK leave the EU, including when the new legal structures on, and following, exit become known.

- *Judicial rate of Interest*

The Council has marked this topic as a high priority for the coming year and the Secretariat has begun research.

- *Proceeds of Crime Act 2002 - Part 11 Order*

Recent amendments to the Proceeds of Crime Act 2002 introduced new powers in respect of the investigation, freezing and recovery of the proceeds of crime in domestic cases. *The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018* (the "2018 Order") updates the principal Orders in Council¹ made under Part 11 of POCA and will make equivalent powers available to provide assistance to overseas courts and authorities.

A request has been received from the Home Office seeking court rules to support implementation of the 2018 Order which is due to commence on 12 November 2019. The Secretariat and Lord President's Private Office are preparing draft rules for the Scottish Civil Justice Council to consider.

¹ The Proceeds of Crime Act 2002 (External Requests and Orders) Order (S.I. 2005/3181) ("the 2005 Order") and The Proceeds of Crime Act 2002 (External Investigations) Order 2013 (S.I. 2013/2605) ("the 2013 Order").



Recent Rules

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

- *Insolvency Rules Amendments*

The Council approved draft rules, which amend the court rules on corporate insolvency: Rule 74.30A of the Rules of the Court of Session 1994 sets out what must be contained in an application under section 176A(5) of the Insolvency Act 1986 (c.45); the Sheriff Court Company Insolvency Rules 1986 are revised to impose an obligation on the sheriff clerk to send to the liquidator a certified copy of the interlocutor appointing the liquidator and equivalent provision is made in Rule 31A in the Rules of the Court of Session 1994.

The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment\) \(Insolvency\) 2019](#) makes three amendments to the court rules on corporate insolvency. The rules were made on 17 July 2019 and came into force on 16 August 2019.

- *Signature of Petitions and Answers*

The Council approved draft rules, which provides that agents can sign a petition in Form 58.3 on behalf of and with authority of counsel in certain circumstances, and that the rules in (3)(ca) also apply to answers to a petition in Form 58.3.

The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Signature of Petitions and Answers\) 2019](#) amends rule 4.2 (signature of documents) of the Rules of the Court of Session 1994 which provides that agents can sign a petition in Form 58.3 on behalf of and with authority of counsel in certain circumstances. The rules were made on 13 September 2019 and came into force on 16 October 2019.

- *Brexit*

The Council approved draft rules which make provision for procedures to be followed in civil proceedings in the Sheriff Appeal Court and before the sheriff, and prescribes court forms; and amends the Rules of the Court of Session 1994 by inserting new Chapter 108 which provides court rules, and accompanying forms, which are required in consequence of the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019.



The [Act of Sederunt \(Challenges to Validity of EU Instruments \(EU Exit\) in the Sheriff Appeal Court and Sheriff Court\) 2019](#) and [Act of Sederunt \(Challenges to Validity of EU Instruments \(EU Exit\) in the Court of Session\) 2019](#) make provision for changes to procedure and provide accompanying forms, which are required in consequence of the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 (S.I. 2019/673). The rules were made on 21 October 2019 and will come into force on the day the UK leaves the EU.



Committee Activity

Access to Justice Committee

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

- *Rules Review: Act of Sederunt (Simple Procedure) 2016*

The Committee has instructed a number of rules changes and amendments to court forms. A final draft instrument is being prepared for consideration by the Committee.

Next meeting of the Committee: Tuesday 03 December 2019.

Costs and Funding Committee

The [Costs and Funding Committee](#) last met on the 09 September 2019 and continued its work on implementation of the Civil Litigation (Expenses and Group Proceedings) (Sc) Act 2018.

- *Implementation of the Civil Litigation (Expenses and Group Proceedings) (Sc) Act 2018*

The Committee's work to implement the 2018 Act is ongoing. The Committee has considered draft rules in respect of qualified one-way cost shifting ("QOCS") under the provisions of section 8 of the Act. It is anticipated that draft rules will be available for consideration by the Scottish Civil Justice Council by the end of the year.

The Committee met on the 09 September and considered draft rules relating to the *pro bono* provisions in section 9 and to awards of expenses against legal representatives, under the provisions of section 11 of the Act.

The Council has noted that the development of rules for group proceedings will be a significant work project going forward and that implementation of the 2018 Act remains a high priority for 2019/2020.

Next meeting of the Committee: Monday 09 December 2019.



Family Law Committee

The [Family Law Committee](#) met on the 08 July 2019 and continued its work on case management in family proceedings in the sheriff court.

- *Case management in sheriff court family actions*

The Committee finalised its policy proposals and instructed draft rules. A draft instrument is being prepared for consideration by the Committee in due course. It is anticipated the draft instrument will be available next year for consideration by the Scottish Civil Justice Council.

Next meeting of the Committee: Monday 11 November 2019

ICT Committee

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

Personal Injury Committee

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

- *Rules of the Court of Session: Chapter 42A: Case management of certain personal injuries actions*

On 1 April 2019, the Personal Injury Committee considered proposals to amend Chapter 42A of the Rules of the Court of Session 1994 and agreed that draft rules should be considered by a sub-group. The sub-group were to also consider whether it is appropriate for the equivalent Sheriff Court Rules (Chapter 36A of the Ordinary Cause Rules) to be amended. The sub-group met on 28 May 2019 with the draft instrument being revised to reflect the points raised during this discussion. The draft rules were approved by the Personal Injury Committee in August 2019 and considered by the Scottish Civil Justice Council in September 2019. The rules were approved subject to minor amendments. This matter has been remitted back to the Personal Injury Committee to note these amendments. It has been decided that the equivalent Sheriff Court Rules are not to be amended at this stage.

- Compulsory pre-action protocols: Clinical Negligence

Work on draft rules on compulsory clinical negligence protocols is due to resume later this year.



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 6776

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](#).