



Scottish Civil Justice Council Update – Issue 8: February 2017

Council Activity – 23 January meeting

Strategy meeting

The Council held its second annual strategy meeting on 23 January 2017 to discuss the work priorities for the Council and its Committees. The event was also attended by Committee Chairs and Committee representatives. The output from the meeting will inform the Council's Annual Programme for 2017/18.

Governance matters

The Council approved revisions to its following governance documents:

- [Publication Scheme and Guide to Information](#) – this was revised to ensure compliance with the Scottish Information Commissioner's latest Model Publication Scheme which was produced on 29 March 2016.
- [Standing Orders](#) – these were revised to reflect current internal processes.

Committee membership

The Council approved the following appointments:

- Access to Justice Committee - Anne Dickson, Director of Strategic Development, to replace Colin Lancaster as the nominated SLAB representative and Colin Lancaster to become the alternate representative.
- Costs and Funding Committee - Hamish Goodall to be the new SG representative with Gery McLaughlin as the alternate representative.
- Family Law Committee - Tom McNamara to replace Robert Marshall as the SG alternate nominee.



- ICT Committee - Claire Taylor, IT Director, to replace Richard Maconachie as both the alternate and papers member for SCTS.

Ongoing work

- Protective Expenses Orders (PEOs) – consultation proposals and draft rules to be considered at the Council’s March meeting.
- Simple Procedure Special Claims Rules – informal consultation on draft rules for simple procedure (special claims) has now taken place; revised draft rules to be considered at the Council’s May meeting.
- Fatal Accident Inquiry Rules – the consultation has now closed. Revised draft rules to be considered at the Council’s March meeting.
- Scotland’s Attractiveness for Commercial Dispute Resolution – the Council considered a paper produced by member Brandon Malone in relation to improving Scotland’s offering as a seat of commercial dispute resolution. It was agreed that the proposals be considered in further detail at a future Council meeting.

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:

- Pursuers’ Offers – at its November meeting, the Council considered and approved draft rules in relation to the establishment of a formal system of pursuers’ offers in the Court of Session and in the sheriff court ordinary procedure. Proposed amendments to the Tables of Fees for making and considering pursuers’ offers were considered and approved at the Council’s January meeting. It is intended that both instruments will be made at the same time.



- Human Trafficking and Exploitation (Scotland) Act 2015 - the Council considered and approved draft rules and prescribed forms in order to implement the Human Trafficking and Exploitation (Scotland) Act 2015. The draft rules make provision for applications for the variation, renewal and discharge of Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). The draft rules also include provision to apply the Mutual Recognition of Protection Measure Rules to TEPOs and TEROs.

Recent Rules

[Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Temporary Exclusion Orders\) 2017](#)

This instrument was made on 31 January 2017 and came into force on 14 February 2017. It makes amendments to the Rules of the Court of Session 1994 to make provision in respect of proceedings under the Counter-Terrorism and Security Act 2015.

Committee Activity

The [Access to Justice Committee](#) has not met since publication of the last Update. Following the Council's approval of the Simple Procedure (Special Claims) consultation proposals, an informal consultation on the draft rules took place in the form of small focus groups in January 2017. The Committee will consider draft rules which have been amended in light of comments received during the informal consultation at its April meeting.

The Committee continues to consider provision for lay representation and is proposing changes to draft rules to allow lay representatives to cross-examine witnesses. Draft rules are to be considered at its April meeting. The Committee is also considering proposals for changes to the current rules on Public Interest Interventions. A paper exploring the issues will be considered at the next appropriate meeting.



The Committee has also considered a new EU Regulation which amends existing Regulations in relation to European Small Claims Procedure and European Order for Payment as it relates to European Small Claims Procedure. Draft rule changes are to be considered at the next appropriate meeting.

The [Costs and Funding Committee](#) last met on 30 January 2017. It continues to consider arrangements for the periodic review of fees. At the meeting the Committee agreed further amendments to the consultation proposals. Thereafter, it agreed that the revised proposals be submitted to the Council for approval. Representatives from the Law Society of Scotland attended the meeting to provide more information on the Society's new Financial Benchmarking Tool and to allow the Committee to feed in to the content of the new survey.

The Committee also considered draft rules and forms in connection with applications under section 19 of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Scottish Legal Aid Fund). The Committee agreed a number of revisions and will consider this matter further at its March meeting.

The [Family Law Committee](#) last met on 13 February 2017. It continues to consider all issues raised in relation to the hearing of the voice of the child. Engagement is ongoing with a number of organisations who work with children and who are piloting new draft forms prepared by the Committee for the purpose of seeking the views of the child in court proceedings. Revised draft rules have also been prepared for consideration when the Committee next meets.

The Committee has also considered draft rules in relation to the appointment of curators *ad litem* in family actions and these have been submitted to the Council for consideration at the next appropriate Council meeting.

The Committee has also considered draft rules which make provision for a case management hearing and a pre-proof hearing in Court of Session family actions and these have been submitted to the Council for consideration at the next appropriate Council meeting.

The commissioned research on case management in family actions is approaching its conclusion. Interviews with judiciary, court staff and practitioners have taken place. An interim report has been received and the final report is expected by mid-March 2017. The final report will be considered by the Committee at its next meeting.



The [ICT Committee](#) last met on 06 February 2017. It considered a Discussion Paper about ICT in the courts which was prepared by the Rules Rewrite Drafting Team as part of the Rules Rewrite Project. The Committee agreed a number of points of principle regarding the use of ICT in the civil courts.

The Committee also approved a summary of its recommendations about online dispute resolution and the online court and agreed that this be submitted to the Council for consideration.

The [Personal Injury Committee](#) has not met since publication of the last Update. Work continues in relation to the draft Simple Procedure (Special Claims) Personal Injury Rules and informal consultation in the form of a small focus group was carried out in January 2017. The Committee will consider draft rules which have been amended in light of comments received during the focus group at its March meeting.

The [Rules Rewrite Committee](#) last met on 21 February 2017 and continues work on implementing the remaining areas of the Courts Reform (Scotland) Act 2014. Rules updating the Court of Session Form 40.2 for permission to appeal came into force on 7 February.

The first stage of the Rules Rewrite Project is complete with the Committee having considered the last 2 discussion papers on *ICT in the Courts* and *Petition and Summons* procedure. The Committee has submitted a number of recommendations for the next steps in external engagement to the Council for approval.

The Committee has continued its work reviewing judicial review proceedings and has agreed that draft rules revising the procedures, in light of the operational feedback, will be placed before the Council for consideration.

The Secretariat and Rules Rewrite Drafting Team are working on an options paper to inform the review of the Sheriff Appeal Court Rules. This will include feedback from operational staff and the sheriffs principal. A meeting to discuss progress and next steps is scheduled for 27 February 2017.

The [SCJC Working Group](#) – *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*. The Working Group next meets on 28 February 2017, when it will consider the responses to the consultation and recommend any revisions to the draft rules as a result.



Additional membership changes

Council membership

New advocate member, Kenneth Campbell QC, has been appointed to the Council for a three year term starting from 4 March 2017. Further information can be found on the Council's [news page](#).

Committee membership

Since the last meeting, the Council has approved the following changes in Committee membership:

- o appointment of Rachel Smith to the Access to Justice Committee for a period of three years from 17 February 2017
- o re-appointments of Sheriff Arthurson and Ruth Crawford to the Access to Justice Committee for a further period of three years from the expiry of their tenure
- o re-appointment of Gavin McColl to the ICT Committee until 22 September 2019
- o re-appointment of Kenneth Forrest to the Rules Rewrite Committee for a period of three years from 03 March 2017
- o Yvonne Anderson, acting Deputy Principal Clerk of Session, to replace Gillian Prentice as the nominated observer for the Family Law Committee
- o Chris Fyffe, Clerking Services Manager, to replace Gillian Prentice as the nominated observer for the Costs and Funding, Personal Injury and Rules Rewrite Committees.



Consultations and other developments of interest

[Consultation on draft Fatal Accident Inquiry Rules](#)

The consultation on the draft Fatal Accident Inquiry Rules closed on 23 January 2017. Responses have now been published and are available on the [consultation](#) page of the Council's website. A consultation report is being prepared and will be published in due course.

Feedback

The Council welcomes all feedback in relation to the practical workings of the rules of court. You can contact us as follows:

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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](#).