



## Scottish Civil Justice Council Update – Issue 9: April 2017

### Council Activity – 20 March meeting

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#### Governance matters

Following on from the Council's Strategy Meeting, members agreed that:

- In relation to engagement with others, discussions will take place at Committee level in advance of work progressing on new policy development to ensure those with a key interest are identified at an early stage.
- In relation to the publication of papers, these should be published once final policy decisions have been taken, and the decision to publish will be taken after the item has been discussed.
- In relation to pace of change, indicative timescales should be agreed at the outset of each new substantive piece of work in order to manage expectations.
- In relation to the role of observers at meetings, observers are able to fully participate in meeting discussions and raise matters that they think may be of relevance to those discussions.

#### Priorities for 2017/18

The Council considered its priorities for 2017/18 for inclusion in its Annual Programme. It was agreed that all the ongoing priorities should continue into 2017/18. The Annual Programme will be considered by the Council in due course in advance of publication.

#### Committee membership

The Council approved the following appointments:

- Costs and Funding Committee – James Mure QC for a further period of three years from 10 March 2017



- Rules Rewrite Committee – Lady Wolffe and Sheriff Thornton for a further period of three years from 21 May 2017
- ICT Committee – Fiona Cameron as the Scottish Government’s standing representative.

### Ongoing work

- Protective Expenses Orders (PEOs) – the Council approved the consultation documents for publication (see Consultation section below).
- Proposals for an online court – the Council considered and approved the ICT Committee’s recommendations following its review of online dispute resolution and online courts. In particular, the Council formally recorded its support for a long term objective of an online court in Scotland and in particular the development of a three tier online system similar to that put forward by the Civil Justice Council and developed by Lord Justice Briggs in his interim and final reports. The Council also noted the Committee’s suggestion that the online court should be taken forward in Scotland using simple procedure cases in the first instance. The papers considered by the Council in relation to this matter can be accessed on the [March meeting](#) page of the Council’s website.
- Scotland’s Attractiveness for Commercial Dispute Resolution – it was agreed that the proposals be considered in further detail by the Access to Justice Committee at a future 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:

- Curators *ad litem* – the Council considered and approved draft rules developed by the Family Law Committee in relation to the appointment of curators *ad litem* to



defenders in family actions. These amendments address difficulties in practice that have been raised with the Mental Welfare Commission by practitioners and litigants.

- EU Damages Directive - the Council considered and approved draft rules to implement Directive 2014/104/EU governing actions for damages for infringement of competition law. The rules make provision for the recovery of documents in a competition claim and for new applications to the court.
- EU Insolvency – the Council considered and approved draft rules in relation to Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. The rules make contextual amendments to replace the references to the original Insolvency Regulation with references to the new Recast Regulation.
- Vexatious litigants – the Council considered and approved draft rules to make provision for handling applications to initiate a court action by an individual who has been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898.

## Recent Rules

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### Act of Sederunt (Fatal Accident Inquiry Rules) 2017

This instrument was made on 31 March 2017 and comes into force on 15 June 2017. The Rules support the implementation of the [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#) and set out how Fatal Accident Inquiries are to work in practice and aims to make them more efficient.



## Committee Activity

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The [Access to Justice Committee](#) last met on 18 April 2017. At the meeting, the Committee considered a revised draft of the Simple Procedure (Special Claims) Rules, which had been revised following small focus group exercises with specialists in the fields of personal injury and housing law in January. The Committee also considered a related fees instrument and an instrument proposing amendments to the core Simple Procedure rules to take on board feedback.

The Committee also considered a paper in relation to the checking of the competence of a writ or application at signet. This matter was referred to the Committee by the Rules Rewrite Committee as part of its considerations of the recommendations of the Scottish Civil Courts Review.

The Committee continues to consider provision for lay representation. Draft rules were considered at the April meeting to allow lay representatives to cross-examine witnesses and it is intended the proposals will be submitted to the Council for consideration at its May 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 considered draft rules relating to the implementation of a new EU Regulation (Regulation (EU) 2015/2421) ('the 2015 Regulation'). The draft rules make necessary amendments to two Acts of Sederunt as a consequence of the 2015 Regulation, the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 (S.S.I. 2008/435) and the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 (S.S.I. 2008/436). The draft rules will be submitted to the Council for consideration at its May meeting.

The [Costs and Funding Committee](#) last met on 27 March 2017. It has now developed consultation proposals for the periodic review of fees, which will be considered by the Council at its May meeting.



The Committee also continues to consider 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. These will be considered further when the Committee next meets in May.

Work is progressing in relation to combining 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 taxation of an account of expenses and associated applications to the court. The Committee has established a working group to develop the draft rules and consider the associated tables.

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. A number of organisations who work with children have piloted new draft forms prepared by the Committee for the purpose of seeking the views of the child in court proceedings. Feedback provided by the children and the organisations will be considered by the Committee at its next meeting.

The Committee has 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 its next appropriate meeting.

The commissioned research on case management in family actions has concluded. Members of the judiciary, court staff and practitioners have been interviewed. The final research 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, which was considered by the Council at its last meeting.

The [Personal Injury Committee](#) last met on 20 March 2017. At the meeting the Committee considered a revised draft of the Simple Procedure (Special Claims) Rules, which had been revised following small focus group exercises with stakeholders in the fields of personal injury and housing law in January. The Committee also considered a related fees instrument.



The Committee considered a policy paper from the Scottish Government about potential changes to rules of court as a result of the proposed Limitation (Childhood Abuse) Bill, which is currently progressing through Parliament.

The Committee also noted updates from the chairs of the two sub groups which are taking forward the work on compulsory clinical negligence and disease, pre-action protocols.

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.

The first stage of the Rules Rewrite Project is complete and the Committee will continue planning the next phase of the project plan as well as finalising arrangements for external engagement.

The Committee has continued its rules review work and has agreed draft rules revising judicial review procedures in light of the operational feedback. It is anticipated that these rules will be placed before the Council for consideration at its May meeting.

The Secretariat and Rules Rewrite Drafting Team are working on the preparation of an issues paper to inform the review of the Sheriff Appeal Court Rules. A meeting to discuss progress and next steps was held on 27 February 2017 with a further planning meeting arranged for late April.

The [SCJC Working Group](#) – *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*. The Working Group held its final meeting on 28 February 2017, when it considered responses to the consultation and approved draft rules which were subsequently submitted to the Council for consideration and approval. The Rules were approved by the Council at its meeting on 20 March and made by the court on 31 March 2017

## Consultations and other developments of interest

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

This consultation closed on 23 January 2017. The [consultation report](#) was published on 03 April



2017, along with the [Rules](#).

### [Consultation on draft rules for Protective Expenses Orders](#)

This consultation was launched on 28 March 2017 and will run until 23 June 2017. The consultation seeks views on draft rules proposing a new procedural model for applications for protective expenses orders.

### Feedback

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The Council welcomes 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](#).