

# MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 20 FEBRUARY 2022

## STRATEGY WORKSHOP

### MINUTES

**Present:** Lord President (Chair)  
Catherine Smith KC  
Denise Swanson (Scottish Government)  
Eric McQueen (SCTS)  
Ian Reid  
Jaqueline Harris  
Lord Ericht  
Nicola Irvine  
Sheriff Way  
Thomas Docherty  
Sheriff Martin-Brown  
Iain MacRae

**In Attendance:** Carolyn Magill (LPPO)  
Chris Fyffe (Deputy Principal Clerk of Session)  
Ysabeau Middleton (Lord President's Law Clerk)

**Support:** Craig McCorkindale (SCJC)  
Graeme Welsh (SCJC)  
Jessica Flynn (SCJC)  
Karen Stewart (SCJC)  
Kelly Jack (SCJC)  
Paula Preston (SCJC)

**Apologies:** Colin Lancaster (SLAB)  
Lady Carmichael (*Chair of the Access to Justice Committee*)  
Sheriff Hughes  
Sheriff Principal Ross

#### Opening comments (Chair)

1. The Chair welcomed members to the annual strategy session, and noted two relevant decisions taken at the preceding Council meeting:
  - Rules Review (for FAI Rules 2017) – the Evaluation Report is being updated, to support seeking the views of the Sheriffs Principal; and
  - Rules Rewrite (for Tribunals) – a research task was added, as a proactive step that can be taken in advance of the transfer of functions.

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**Item 1. This year's work programme (2022-23):**

The progress made in the year to date

2. Members noted the six rules instruments made in the year to date, of which two had long commencement periods extending well into the 2023-24 year:

WORKFLOW	RULES INSTRUMENTS MADE & LAID	COMMENCES
RULES REVIEW	Simple Procedure (Core Rules) Simple Procedure (Core Rules) – new commencement date	28 Nov 2022 <b>31 May 2023</b>
MODERNISATION	Case Management in Sheriff Court Family Actions	<b>25 Sep 2023</b>
OTHER RULES REQUESTS	Electronic Transmission by Registers of Scotland	1 Oct 2022
COMMENCEMENT OF ACTS	Unexplained Wealth Orders Civil Protection Orders	19 May 2022 1 Dec 2022

3. The latest forecast is for a further two instruments to be made and laid within the six weeks that remain until the end this financial year (*Attendance at Hearings / Antisocial Behaviour*). In addition the Work Programme has delivered:
- 1 item closed by Report (*the Scoping of Tribunal Rules*); and
  - 1 item closed by Letter (*the Judicial Rate of Interest*).

The priorities to be carried forward

4. At the start of this financial year, the Council flagged 16 items as priorities. With 4 of those priorities closed during the year, the following 12 priority items remain to be carried forward into the 2023-24 financial year:

WORKFLOW	POLICY TOPIC	TARGET
RULES REVIEW	Inner House Rules	Q1 2023-24
MODERNISATION INITIATIVES	Rules Rewrite - the New Civil Procedure Rules Simple Procedure Special Claims (SPSC) Lay representation, lay support and party litigants Pre Action Protocol – Clinical Negligence Pre Action Protocol – Disease	
OTHER REQUESTS FOR NEW RULES	Appointment of Assessors (Equality Act 2010) Extension of Simplified Divorce	
CONSULTATIONS BY THE SCJC	Modes of Attendance	Q1 2023-24

COMMENCEMENT OF ACT's	CL (E & GP) (S) Act 2018: – sec 9 – Pro Bono Expenses Orders – sec 10 – Funders Expenses Orders – sec 11 – Unnecessary Expenses Orders	Q1 2023-24 Q1 2023-24 Q1 2023-24
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5. Of those 12 priorities, a further 5 priorities are on track to be closed by mid-year.

***Item 2. Next year's work programme (2023-24):***

*COURT RULES - The pipeline of rules requests*

6. The meeting noted the update given on each of the outstanding rules requests.
7. The Scottish Government had intended to issue a Simplified Divorce consultation in April 2023. Support for these changes has waned in light of questions on the availability of legal aid to support effective representation, and potential barriers in comparison to Simple Procedure. The SCTS are assessing costs to support SG in developing the accompanying Business and Regulatory Impact Assessment (BRIA). SG will provide an update to the next meeting of the Family Law Committee.

*FEES RULES - The pipeline of rules requests*

8. The meeting discussed the 4 requests for new fees rules. It was noted that the write up of the fee structures for the 2 PI protocols is complete, with the reports going to the Costs and Funding Committee for signoff. Once approved, those 2 rules requests will be closed, with the 2 protocols remitted back to the Personal Injury Committee for finalisation.

*FATAL ACCIDENT INQUIRIES RULES - The pipeline of rules requests*

9. The meeting noted the Rules Review carried forward for the FAI rules and the initial Evaluation Report tabled at the Council meeting earlier today. Some care and maintenance changes have been identified to improve these rules. An updated version 1.1 of the Evaluation Report will be shared with the Sheriffs Principal, and then the COPFS, prior to any consideration of whether promulgating the FAI Rules 2023 will add value.

*TRIBUNAL RULES – Preparing for the transfer*

10. The meeting noted the decisions from the Council meeting earlier today:
  - The Scoping Report was considered (closing that task);
  - The establishment of a Tribunal Committee was deferred (until 2026/27);
  - A research task was added to prepare for a future rules rewrite; and
  - The task for monitoring the 7 remaining jurisdiction transfers was noted.

## ENVIRONMENTAL SCANNING

11. The meeting noted the pending Bills going through Parliamentary Scrutiny in both the UK Parliament and the Scottish Parliament:

WORKFLOW	POLICY TOPIC	Page count
PARLIAMENTARY SCRUTINY OF BILLS - SG	UNCRC (Incorporation) (Scotland) Bill – <i>RECONSIDERATION</i>	46
	Gender Recognition Reform (Scotland) Bill - <i>BLOCKED</i>	26
	Moveable Transactions Bill	70
	National Care Services Bill	38
	Trusts and Succession (Scotland) Bill	58
PARLIAMENTARY SCRUTINY OF BILLS - UKG	National Security Bill	152
	Financial Services and Markets Bill	335
	Retained EU Law (Revocation and Reform) Bill	42
	Economic Crime and Corporate Transparency Bill	250

12. If the Retained EU Law Bill did proceed with a December 2023 commencement date, there is a risk that it could significantly reduce the availability of legal resources for the drafting of other new rules.

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### Item 3. Members' views - on the priorities from the current pipeline

**13. The meeting agreed the 12 priorities carried forward.**

14. The Council's number one priority remains progressing the Rules Rewrite. There is a danger of diluting that work by adding too many other new priorities.

**15. The meeting agreed to add four items as priorities for 2023-24:**

- **Caveats** (*to support the digitisation of that process*);
- **The consolidated Interveners Chapter** (*as a means to avoid bespoke procedure*);
- **Protective Expenses Orders** (*to improve compliance with the Aarhus convention*); and
- **The Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019** (*Given the time elapsed since the Act was passed*).

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### Item 4. Members' views - on the policy topics to be added (if any)

16. Members noted that the original Group Proceedings rules addressed opt-in procedure as a first step, supporting the diesel gate cases pending at that time.

17. Once the Group Proceedings rules had sufficient time to bed in, the intention was to revisit adding an opt-out procedure; due to the interest from consumer organisations. The evidence from the cases that have proceeded to date, and the work of the UK Competition Appeals Tribunal, will support the further research required in this policy area.

**18. The Council agreed to consider a new rules request for:**

- **Group Proceedings Part 2 (Opt out procedure)**
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**Item 5. Agreeing the priorities - for the coming year (2023-24)**

**19. The Council agreed its 16 priorities for the 2023-24 year as:**

- **The 12 priorities carried forward, the Caveat rules, the Interveners Chapter, the Protective Expenses Rules 2023; and rules to support the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019.**
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**Closing Comments (Chair)**

20. The Chair thanked members for their contributions to the development of the Work Programme for the 2023-24 year.

## ANNEX 1 – THE 44 RULE CHANGES REQUESTED

(The 16 priority items are shown in **bold**)

### COURT RULES (37):

Count	Item	Category	Description
1	F37 / F74	Rules Review	Pre Action Protocol – Personal Injury
2	F72	Rules Review	Withdrawal of Agents (RCS Chap. 30)
3	F77 / A1	Rules Review	<b>Inner House Rules</b>
4	D2	Rules Review	<b>Protective Expenses Orders (PEO's)</b>
1	A2	Modernisation	<b>The New Civil Procedure Rules / Digitisation</b>
2	-	Modernisation	<b>Simple Procedure Special Claims (SPSC)</b>
3	F5	Modernisation	<b>Lay representation, lay support and party litigants</b>
4	F86	Modernisation	<b>Pre Action Protocol - Clinical negligence</b>
5	F87	Modernisation	<b>Pre Action Protocol - Disease</b>
6	F93	Modernisation	<b>Caveats</b>
7	-	Modernisation	<b>Interveners (consolidated chapter)</b>
8	-	Modernisation	Group Proceedings Part 2 (opt in procedure)
1	E10	Other Request	Public Interest Interventions
2	F62	Other Request	<b>Appointment of assessors under the Equality Act</b>
3	F3	Other Request	<b>Extension of Simplified Divorce</b>
4	-	Other Request	Historic Abuse – Nominal Defenders
5	-	Other Request	E-Motions
6	-	Other Request	Reporting Restriction Orders
7	F89	Other Request	Pursuers offers (for PI cases under £5k)
8	F90	Other Request	Lodging objections in a Diet of Taxation
9	F94	Other Request	Inhibition in execution
10	F95	Other Request	Postal copies (of documents served)
1	F91	Consultation	<b>Mode of Attendance</b>
2	F77 / A1	Consultation	Inner House Rules
1	B45	Acts	Abusive Behaviour and Sexual Harm (Scotland) Act 2016
2	B34.B	Acts	<b>Civil Litigation (Expenses &amp; Group Proceedings)(S) Act 2018 - Sec 9</b>
3	B34.C	Acts	<b>Civil Litigation (Expenses &amp; Group Proceedings)(S) Act 2018 - Sec 10</b>
4	B34.D	Acts	<b>Civil Litigation (Expenses &amp; Group Proceedings)(S) Act 2018 - Sec 11</b>
5	B37	Acts	<b>Damages (Investment Returns and Periodical Payments) (S) Act 2019</b>
6	-	Acts	Civil Partnership (Scotland) Act 2020
7	B40	Acts	Children (Scotland) Act 2020
8	B43	Acts	UK Withdrawal from the European Union (Continuity) (S) Act 2021
9	C40	Acts	Telecommunications Infrastructure (Leasehold Property) Act 2021
10	-	Acts	Defamation and Malicious Publication (Scotland) Act 2021
11	B42	Acts	Domestic Abuse (Protection)(Scotland) 2021
12	-	Acts	Payment & Electronic Money Institution Insolvency Reg's 2021
13	-	Acts	Coronavirus (Recovery and Reform) (Scotland) Act 2022

### NEW FEES RULES (4):

Count	Item	Category	Description
1	F88	Fees Review	Law Society of Scotland
2	F86	Fees Review	Fee structure - for Clinical Negligence PAP
3	F87	Fees Review	Fee structure - for Disease PAP
4	-	Fees Review	SMASSO

### NEW INQUIRY RULES (1):

Count	Item	Category	Description
1	F69	Rules Review	Fatal Accident Inquiry rules

### NEW TRIBUNAL RULES (2):

Count	Item	Category	Description
1	-	Other requests	Monitor the jurisdiction transfers (per the 2014 Act)
2	-	Other requests	Rules Rewrite (for Tribunals)