

ACTIVITY SINCE PREVIOUS MEETING**Purpose**

1. To provide members with information on activity which has taken place since the last meeting.

Committee Activity

2. Committee activity reports are provided at **Annex A**.

Progress of actions arising from previous Council meetings

1) Research- case management in family actions	Secretariat	<p>In progress</p> <p>SLAB ADR Research report published on 19 May 2016. Report to be considered by Access to Justice Committee in due course.</p> <p>Report on case management in family actions prepared by the Family Law Committee's sub-group was considered at the Council's November 2017 meeting and members agreed that a public consultation on the recommendations should take place at this stage.</p> <p>Consultation launched: 30 May 2018 and closed 22 August 2018.</p> <p>FLC considered the consultation report at its meeting in 08 October 2018.</p> <p>The Sub Group agreed to undertake further analysis of the consultation responses. Next Sub Group meeting 14th January 2019.</p>
2) Protective Expenses Orders Initial draft rules	Secretariat LPPO	<p>Complete</p> <p>Working group established to consider policy issues emerging and to make</p>

<p>considered at October 2016 meeting. Members agreed that the rules should be further revised and that draft rules and consultation proposals be considered by the Council at the next appropriate meeting</p>		<p>recommendations for revised procedural rules.</p> <p>09 July 2018, Council considered draft rules (revised in light of the recommendations of the working group) and agreed they be submitted to the Court of Session for approval.</p> <p><i>Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2018</i> came into force on 10 December 2018</p> <p>ITEM COMPLETE</p>
<p>3) Review of Sheriff Appeal Court Rules</p> <p>At the October Council meeting, members agreed in principle to bring forward the review of the SAC Rules, subject to resource requirements.</p>	<p>Secretariat LPPO</p>	<p>In progress</p> <p>A number of meetings have been held with Sheriff Principal Abercrombie and the Sheriff Appeal Court clerks to discuss what improvements could be made to the Rules.</p> <p>Feedback received from the Faculty of Advocates, Sheriffs' Association & SAC clerks; RRDT/Secretariat analysing responses which will be issued to Sheriffs Principal for further comment.</p>
<p>4) Fees consultation</p>	<p>Secretariat</p>	<p>Complete</p> <p>Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors was launched on the 21 September 2017 and closed on 17 November 2017.</p> <p>05/09/2018 - Analysis of Responses produced. 05/11/2018 – Analysis paper considered at CAFC meeting.</p> <p>11/01/2019 – Analysis published on the SCJC website. See Agenda Item 2.3</p>

5) Voice of the child: form redesign proposals	Secretariat LPPO	In progress The Family Law Committee continues to consider all the issues raised in relation to the hearing of the voice of the child. Draft forms have been revised in light of the feedback previously obtained and are being considered by a graphic designer to make them more child-friendly and visually appealing. Draft rules and forms approved by FLC on the 8th of October 2018. See agenda item 6.1.
6) Lay representation	Secretariat LPPO	In progress The Access to Justice Committee continues its review into lay representation and lay support in the Scottish courts and in particular considered the issue of how rules of court should regulate lay representatives and lay supporters and whether or not lay representatives should be able to receive travel and subsistence costs from the litigant. On 09 July 2018 meeting, the Council considered a report from the Access to Justice Committee setting out recommendations following its review of lay representation and lay support in the Scottish courts. The Council was broadly supportive of the recommendations and following detailed discussions, approved the recommendations and remitted the matter back to the Access to Justice Committee for the preparation of draft rules. The Council agreed that the rules should avoid creating a right of audience for lay representatives and that a party should remain under an obligation to attend procedural hearings personally, unless the judge excuses the party's

		attendance on cause shown. LPPO drafting rules.
7) Brexit	LPPO	In progress Scoping exercise has been undertaken by LPPO to assess implications on rules of court. Results shared with members via correspondence. At its January meeting, the Council agreed a process for the approval of Brexit related amendments.
8) Judicial rate of interest	Secretariat	In progress Paper considered at May Council meeting confirming that amendments to the rate of interest fell within the powers of the Council to regulate. Council agreed to write to the Scottish Government seeking the Government's views on how best to progress matters. 04 June 2018 - Secretariat wrote to Gavin Henderson, SG for views. 08/2018 – Secretary agreed SCJC will take this forward. Secretariat will explore how the matter could be progressed and what initial research may be required with a view to preparing an options paper for Council.

Rules made since last meeting

3. Two instruments have been made since the last meeting:

- [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Protective Expenses Orders\) 2018](#) come into force on 10 December 2018. These new rules aim to enhance access to

justice by preventing court actions relating to the environment being “prohibitively expensive” to members of the public.

- Act of Sederunt (Child Support Rules Amendment) (Disqualification) 2018. This [Act of Sederunt](#) amends the Child Support Rules to make procedural provisions for applications to the sheriff to disqualify a non-resident parent from holding or obtaining a UK passport if he or she fails to pay child support maintenance. The new rules come into force on 21 January 2019.

Recommendation

4. **The Council is invited to note the progress of actions outlined in this paper and the committee activity updates provided.**

Scottish Civil Justice Council Secretariat

January 2019

Annex A**COMMITTEE ACTIVITY REPORT****Access to Justice Committee**

1. The [Access to Justice Committee](#) last met on 23 April 2018. The next meeting of the Committee is scheduled for Monday 11 February 2019.

Costs and Funding Committee

2. The [Costs and Funding Committee](#) last met on 5 November 2018 and considered the following matters:

Implementation of Taylor Recommendations

3. The Committee considered a summary of the implementation of recommendations made in Chapters 2 to 4 of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland, ("Taylor Review"), and agreed that the document be submitted to Council for approval for publication. The Council considered the matter by correspondence and agreed with the Committee recommendations. The summary was published on the SCJC website in January 2018.

4. The Committee also considered the following:

- Block table of fees (Taylor Review recommendations 4, 8 and 10): the Committee noted that consideration of these recommendations will be carried out in conjunction with the rules rewrite project.
- Fixed expenses (Taylor Review recommendations 30 and 32): the Committee proposed that recommendation 30 should not be taken forward as this is a matter already governed by primary legislation. The Committee agreed recommendation 32 will be considered further at a future meeting.

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

5. The Committee was invited to consider its policy for rules of court consequential on Sections 8 (Qualified One-Way Cost Shifting), 9 (pro bono work) and 11 (Awards of Expenses Against Legal Representation) of the Act and agreed that draft rules of court should be prepared and considered at the next appropriate meeting.

Regulation of Fees – review of solicitor's fees

6. The Committee noted and agreed that the analysis report in respect of the consultation on the Review of Fees in the Scottish Civil Courts: Fees of

solicitors should be submitted to Council for consideration and publication of the report.

7. Council approved publication of the report by correspondence on the 17 December 2018. The analysis was published on the SCJC website in January 2018.

8. Next meeting of the Committee: Monday 4 February 2019.

Family Law Committee

9. The [Family Law Committee](#) last met on 08 October 2018. The Committee's case management sub-group is due to reconvene on 14 January 2019 and will consider the responses from the consultation on case management in family proceedings in the sheriff court.

Hearing the voice of the child

10. Draft rules have been submitted to the Council for consideration at its meeting on 21 January 2019.

ICT Committee

11. The [ICT Committee](#) last met on 27 August 2018.

Personal Injury Committee

12. The [Personal Injury Committee](#) last met on 08 October 2018.

Rules Rewrite Committee

13. The [Rules Rewrite Committee](#) last met on 03 July 2018.

