



Scottish  
Civil Justice  
Council



# Scottish Civil Justice Council

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## Annual Report 2018/2019 and Annual Programme 2019/2020

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Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

T: 0131 240 6776

E: [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

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## Chair's Foreword

The Scottish Civil Justice Council has now been in existence for more than six years, and it is a pleasure to introduce the Council's sixth Annual Report, covering the year to 31 March 2019. The Council's Annual Report and its Annual Programme of Work for 2019-2020 have again been published together as much of the work spans both periods.



The Council continues to support the wider programme of civil court reform envisaged by the Scottish Civil Courts Review (the Gill Review). Much has been done to implement those recommendations. Major reforms, such as the review of judicial review procedure, the creation of a Sheriff Appeal Court, and the creation of an All-Scotland Sheriff Personal Injury Court have brought with them the efficiencies we had hoped for. The core Simple Procedure Rules are benefiting from increased online functionality. Despite the inevitable limitations of austerity, the Council is steadily progressing key initiatives.

Meanwhile, considerable work is being done, by the Council and its Committees, in responding to requests for rules to implement new legislation or policy initiatives. The Council's work in this area over the last year is set out in the Report. Rules have been brought into force across a wide range of subject matters, from new rules on protective expenses orders in environmental proceedings to taxation of judicial expenses. A total of 14 sets of draft rules have been prepared by the Council and given legal effect by the Court of Session.

I remain grateful for the generous support of all those who support the Council, and the Council's committees and specialist working groups. That support has been critical to the Council's work. I am grateful, as always, to the Council's Secretariat and to the staff of the Lord President's Private Office for their hard work and commitment over the course of the year.

**The Rt. Hon. Lord Carloway  
Lord President and Lord Justice General  
Chair of the Scottish Civil Justice Council**

# About us

## Introduction

The Scottish Civil Justice Council (the Council) was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (the 2013 Act). It is responsible for preparing draft rules of procedure for the Court of Session and for civil proceedings in the sheriff court. It also has the function of providing advice and making recommendations to the Lord President on the development of the civil justice system in Scotland.

## Objectives and functions

The Council's key functions are:

- keeping the civil justice system under review;
- reviewing the practice and procedure followed in the Court of Session and in civil proceedings in the Sheriff Appeal Court and the sheriff court;
- reviewing the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016;
- preparing and submitting to the Court of Session draft civil procedure rules, draft fees rules and draft inquiry procedure rules; and
- advising and making recommendations to the Lord President on the development of and changes to the civil justice system in Scotland.

## Guiding principles

Under section 2 of the 2013 Act, the Council must have regard to the following principles when carrying out its functions:

- the civil justice system should be fair, accessible and efficient;
- rules relating to practice and procedure should be as clear and easy to understand as possible;
- practice and procedure should, where appropriate, be similar in all civil courts; and
- methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.

In order to ensure that these statutory guiding principles are built into the work of the Council, an assessment of compatibility with each of the principles is carried out every time the Council considers new rules proposals.

In addition, these principles are incorporated into the individual remits of each Council committee to ensure all committees have regard to them when formulating rules proposals.

## Who we are

### Membership

The Scottish Civil Justice Council is to have not more than 20 members, encompassing a range of interests and experiences across the civil justice system.

The categories of membership are provided for in the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, as follows:

### Judicial members

- The Lord President (Lord Justice Clerk may deputise) (Chair)
- At least 4 judges, including a minimum of 1 judge of the Court of Session and 1 sheriff principal or sheriff

### Standing appointments

- The Chief Executive of the Scottish Courts Service
- The principal officer of the Scottish Legal Aid Board
- 1 member appointed by the Scottish Ministers

### Legal members

- at least 2 practising advocates (“advocate members”)
- at least 2 practising solicitors (“solicitor members”)
- at least 2 persons (“consumer representative members”)
- up to 6 other persons considered by the Lord President to be suitable to be members of the Council (“LP members”).

Category	Position	Name
<b>Chair</b>	The Lord President and Lord Justice General, by virtue of that office	The Right Hon. Lord Carloway
<b>Ex officio members</b>	Chief Executive of the Scottish Courts and Tribunals Service, by virtue of that office	Eric McQueen
	Principal officer of the Scottish Legal Aid Board, by virtue of that office	Colin Lancaster
	1 member appointed by the Scottish Ministers	Gavin Henderson
<b>Judicial members</b> Appointed by the Lord President	At least 4 judges including a minimum of:  1 judge of the Court of Session, and  2 sheriffs principal or sheriffs	The Right Hon. Lord Boyd of Duncansby  The Hon. Lady Carmichael  Sheriff Principal Abercrombie QC  Sheriff Hughes  Sheriff Way
<b>Advocate members</b> Appointed by the Lord President in consultation with the Faculty of Advocates	At least 2 practising advocates	Lynda Brabender QC  Kenneth Campbell QC
<b>Solicitor members</b> Appointed by the Lord President in consultation with the Council of the Law Society of Scotland	At least 2 practising solicitors	Joel Conn  Elena Fry  Jacqueline Harris
<b>Consumer representative members</b> Appointed by the Lord President in consultation with the Scottish Ministers	At least 2 persons who, between them, appear to the Lord President to have —  (i) experience and knowledge of consumer affairs,  (ii) knowledge of the non-commercial legal advice sector, and  (iii) an awareness of the interests of litigants in the civil courts, and	Vacancies (recruitment process in progress)
<b>LP members</b> Appointed by the Lord President in consultation with the Scottish Ministers	Up to 6 other persons considered by the Lord President to be suitable to be members of the Council	Employment Judge Joseph d'Inverno  Brandon Malone

The Council has nominated a number of observers to attend Council and committee meetings in order to assist in the carrying out of its functions. In addition to the members above, the following observers attend Council meetings:

Cameron Stewart	Director of Development and Innovation, Scottish Courts and Tribunals Service
Nicola Anderson	Legislation Implementation Team, Scottish Courts and Tribunals Service
Diane Machin	Deputy Principal Clerk of Session, Scottish Courts and Tribunals Service

## Committees

The Council has established the following committees to assist it in carrying out its work:

Committee	Chair	Remit & Functions	Date established
<b>Access to Justice</b>	The Hon. Lady Carmichael	This Committee monitors the effect on access to justice and the operation of the civil justice system; to keep relevant rules under review; to develop and consider proposals for modification and reform and, where appropriate, to draft rules for SCJC consideration.	23 September 2013
<b>Costs and Funding</b>	The Hon. Lord Burns	This Committee is concerned with matters that can be regulated by the Court of Session Rules in civil matters including award of expenses and fees provisions. The Committee keeps the relevant rules, tables and fees under review; It considers proposed reforms and puts forward recommendations and draft rules when applicable, to the SCJC.	18 September 2013
<b>Family Law</b>	The Hon. Lady Wise	This Committee is concerned with family actions and cases involving children. It keeps the family law civil rules under review; makes proposals for change; aims to ensure, via court rules and guidance, that cases are dealt with expeditiously and efficiently; reviews, develops and promotes a case management structure; reports to the SCJC with recommendations for change and drafts new rules where required. At its core, the Committee has, as a paramount consideration, the welfare of children.	10 June 2013



<b>Information and Communications Technology</b>	Vacancy	This Committee considers how ICT can be used effectively within the Scottish civil courts; to make recommendations to the SCJC with regard to initiatives relating to the use of ICT; to review the rules of court and propose reform and draft rules where appropriate.	23 September 2013
<b>Personal Injury</b>	The Hon. Lord Armstrong	This Committee keeps the relevant personal injury civil rules under review; makes proposals for change; develops rules relating to action to be taken before proceedings are brought and encouraging fair, just and timely settlement of disputes; make provision for any type of personal injury claim of any value at any stage of proceedings; and report to the SCJC with recommendations for change and new rules where necessary.	23 September 2013
<b>Rules Rewrite</b>	The Rt. Hon. Lord Carloway, Lord President	This Committee oversees the management of the Rules Rewrite Project (RRP); develops a framework for reviewing new rules prepared under RRP & reforms under the Courts Reform (Scotland) Act 2014; considers issues that do not fall under remit of any other Committee.	10 June 2013

## Support

The Scottish Courts and Tribunals Service (the SCTS) provide secretariat support for the Council. The Secretariat consists of:

<b>Secretary</b>	Roddy Flinn
<b>Deputy Secretary</b>	Steven D’Arcy
<b>Policy Manager</b>	Karen Stewart
<b>Policy Officers</b>	Kelly Jack Emma Laurie
<b>Secretariat Business Manager</b>	Andrea Campbell
<b>Secretariat Support</b>	Jennifer Kelly

Legal support is provided by the Lord President’s Private Office, which is staffed by government lawyers on secondment from the Scottish Government Legal Directorate. A specialist drafting team, made up of government lawyers, has been created to carry out the rules revisions under the Rules Rewrite Project.

# Key achievements and ongoing work

The Council's work during the period 2018/2019 can be categorised into four different strands:

- continued implementation of major justice system reform projects;
- consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules ;
- consideration of potential improvements to procedures which can be taken forward without primary legislation; and
- review of new rules developed by the Council, where the Council has agreed to a review exercise.

## Justice System Reform

The Council's work in this area during 2018/2019 focused on four major initiatives:

- Civil Courts Reform
- Sheriff Principal Taylor's Review of Expenses
- Funding of Civil Litigation in Scotland and the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018
- Brexit related work

### 1. Civil Courts Reform

This continues to be the major focus of the Council's work. Over the last four years, the Council has worked on the implementation of those reforms for which the legislative underpinning was provided in the Courts Reform (Scotland) Act 2014. The 'core' Simple Procedure Rules, dealing with actions for payment, have been in place since 2016. The Simple Procedure (Special Claims) Rules, which are being developed by the Access to Justice and Personal Injury Committees, have also been drafted.

The Council is currently reviewing the core Simple Procedure Rules to evaluate the user experience. The review has included a public consultation and research seeking to identify any difficulties with the core rules before bringing the Special Claims Rules into force. The Scottish Courts and Tribunals Service has also carried out an operational review of the core rules and has provided feedback which the Council will take account of in its review. It is anticipated that amendments to the core rules will be in place by the autumn of 2019. Implementation of the Special Claims rules will follow.

### *Implementation of the remaining recommendations of the Scottish Civil Courts Review*

The final tranche of courts reform for the Council is the implementation of the wider recommendations contained in the Scottish Civil Courts Review (“SCCR”) that can be taken forward without the need for primary legislation. A number of these recommendations were previously identified by the Council as priorities and progress summaries are provided below:

#### *Rules Rewrite Project Plan*

During 2018/2019, the Rules Rewrite Committee continued its work on Phase 2 of the Rules Rewrite Project Plan. This involved the development of a detailed model for ordinary procedure in the Court of Session and sheriff court. The model will take the form of a “procedural narrative” which will be a step-by-step guide setting out how the Council envisages an ordinary action proceeding through court. A number of working groups were set up, consisting of Council/committee members together with external experts and met regularly over the course of the year. Five areas of practice were considered:

- commencement and initial case management;
- applications and motions;
- decrees, extracts and enforcement;
- evidence, proof and hearings; and
- access to justice.

The work on the Rules Rewrite Project will be paused until January 2020, as staffing resource has had to be directed to other priority areas of work. The Rules Rewrite Project is a long-term project and it is not envisaged that the delay would impact upon the project’s overall delivery.

#### *Compulsory pre-action protocols*

This work is being progressed by the Personal Injury Committee (“the Committee”).

A personal injury pre-action protocol was introduced in November 2016 and work is being undertaken to develop compulsory protocols for disease and clinical negligence cases, on the following basis:

### *Disease*

A compulsory pre-action protocol for disease cases has been developed by a sub-group of the Committee. The proposed procedure set out within the draft protocol has been approved by the Committee and will be considered by the Costs and Funding Committee to develop an accompanying fee structure. It is anticipated that work will commence in the autumn of 2019.

### *Clinical negligence*

In 2016 the Committee established a sub-group which drafted a compulsory pre-action protocol for clinical negligence cases. The work was then paused to allow for the trial of a voluntary protocol involving NHS National Services Scotland Central Legal Office and some pursuer firms. The Committee has recommenced work on the compulsory protocol and the sub group has been re-established. It last met in October 2018 and the drafting of the rules is ongoing.

### *Judicial case management in family actions*

The Family Law Committee (“FLC”) has been considering the operation of Chapter 33AA and the case management of family actions more generally. Following on from research commissioned during 2016/17, a sub-committee was established to consider the conclusions of the research report and some related proposals that were submitted by the Scottish Government. The sub-committee report made several recommendations on how to improve the case management of family actions in the sheriff court and was subject to public consultation in May 2018. The sub-group considered the consultation responses and issued a report to the FLC to consider prospective rule changes.

### *Implementation of the remaining recommendations of the Scottish Civil Courts Review*

There are still a number of recommendations within the Scottish Civil Courts Review that fall within the Council’s remit for implementation. Some recommendations have been superseded by other pieces of work, most notably a number of the recommendations in Sheriff Principal Taylor’s Review of Costs and Funding of Civil Litigation. The recommendations on speculative fee agreements, QOCS and damages based agreements are implemented through primary legislation as a package through the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, discussed below. The Council’s work on the outstanding recommendations of the Scottish Civil Courts Review recommendations requires realistic timescales to be assigned and it is unlikely to be feasible to conclude this work until all tasks until 2020/2021.

## 2. Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland and the Civil Litigation (Expenses and Group Proceedings)(Sc) Act 2018

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the 2018 Act”) implements Sheriff Principal Taylor’s recommendations relating to:

- success fee agreements;
- qualified one-way costs shifting;
- expenses against third-party funders; and,
- awards of expenses against legal representatives.

It also implements the SCCR recommendations relating to auditors and group proceedings. A number of provisions in the 2018 Act will require consequential provision in rules of court.

Draft rules relating to qualified one-way costs shifting are being developed by the Costs and Funding and Personal Injury Committees. The Costs and Funding Committee has also developed draft rules relating to awards of expenses against legal representatives. The Council has noted that it anticipates that the development of rules for group proceedings will be a significant work project going forward. **The Council’s work on the implementation of the 2018 Act remains a high priority for 2019/2020.**

## 3. Tribunals

The 2014 Act makes provision for the Council’s functions to be widened to include the Scottish Tribunals. The Scottish Government has confirmed that the relevant section of the 2014 Act will not be brought into force until such time as devolved tribunals are transferred in to Scottish Tribunals. That is not expected to be complete until 2022.

## 4. Brexit related work

Further consideration was given during 2018/2019 for the need to deal with the impact of the UK’s withdrawal from the EU (Brexit) on the rules of court. Many of the rules of court give effect to EU measures – for service of documents and the recognition and enforcement of decrees, etc. Although Brexit was due to occur on the 29 March 2019, the deadline has now been extended. If there is a short ‘no deal’ period within which to put through critical Brexit-related amendments, this work will require to be given a very high priority. A comprehensive scoping exercise has been carried out to identify any urgent areas of work.

## Consideration of primary and subordinate legislation and developments in case law and the subsequent preparation and consideration of rules

The Council has an ongoing function to review court rules and procedure in light of changes in the law, either through new legislation or developments in case law. This can often be reactive work, sometimes with short deadlines so can be difficult to plan for and can impact on existing priorities.

During 2018/2019, this function included consideration of the policy in relation to, and drafting rules for the **Sanctions and Anti-Money Laundering Act 2018**, the **Criminal Finances Act 2017**, the **Child Maintenance and Other Payments Act 2008**, **Modernisation of the Insolvency (Scotland) Rules** and **Protective Expenses Orders in environmental proceedings**. A full list of the rules made by the Court of Session following submission of draft rules by the Council can be seen in the "[Summary of Rules Prepared](#)" section.

### *Judicial Rate of Interest*

Turning to developments in case law, the decision of the Inner House in *Farstad AS v Enviroco Limited* was identified as a priority for the Council in its programme for 2018/2019. This decision confirmed that the judicial rate of interest, of 8%, should be a starting point for Scottish courts in awarding interest. There were concerns that this rate was much higher than commercial rates and unfair to consumers. The Council was unable to progress this matter in 2018/2019, due to other competing priorities, but it has been marked as a continuing high priority for the coming year.

## Consideration of potential improvements to procedures which can be taken forward without primary legislation

One of the Council's key functions is to review current practice and procedure in the courts. Where a shortcoming is identified, the Council can consider proposals for amendment of rules. The Council can also consider changes in response to wider policy initiatives developed by government, general requests for changes to rules, or of its own accord.

In addition to the work undertaken above, the Council has made progress with the following areas of work and **these will continue to be priorities for 2019/2020**:

### *Lay representation, lay support and party litigants*

This work is being progressed by the Access to Justice Committee. In July 2018, the Council considered a report from the committee, setting out recommendations following its review of lay representation and lay support in the Scottish courts. The Council approved the proposals and draft rules are under development. The committee anticipates submitting draft rules incorporating proposals for reform to the Council in 2019/2020.

### *Regulation of Fees*

The functions of the Council include the preparation and submission of 'draft fees rules'. These are defined as rules made in exercise of the power to regulate fees conferred on the Court of Session by sections 105 and 106 of the Courts Reform (Scotland) Act 2014. This includes the fees of solicitors, messengers-at-arms, sheriff officers, witnesses and shorthand writers.

During 2018/2019, the Costs and Funding Committee concluded its review of the fees of solicitors. The Council approved proposals developed by the committee, for new rules amending the tables of fees that can be recovered under an award of expenses for work carried out by a party's solicitor. The fees apply in civil proceedings brought in the Court of Session, Sheriff Appeal Court and sheriff court. The new rules commenced on 24 September 2018 and the amended fees have effect in respect of work carried out on or after that date.

### *Amendment to Chapter 42A*

The Personal Injury Committee considered proposals to amend Chapter 42A of the Rules of the Court of Session (case management of certain personal injuries actions) at several of its meetings during the reporting period, including feedback received on the proposals from the NHS Central Legal Office. Draft rules have been agreed by the Personal Injury Committee, which will be considered by informal consultation by a group of stakeholders who have been recommended by the Council's Secretariat. This group of individuals will also consider whether it is appropriate for the equivalent Sheriff Court Rules (Chapter 36A of the Ordinary Cause Rules) to be amended as part of this exercise.

### *Expenses and taxation*

During 2018/2019, the Costs and Funding Committee took forward its policy for implementation of the recommendations made in Chapters 2 – 4 of the Taylor Review of Expenses and Funding. The Committee concluded a far-reaching overhaul of the rules regulating the taxation of expenses and the associated tables of fees with the development of two rules instruments. These rules were made on 27 February 2019 and came into force on 29 April 2019.

### *The Voice of the Child*

The Family Law Committee concluded its current work on seeking to improve the method of ascertaining the views of the child in family actions. This work included public engagement and consultation sessions with children and has resulted in amended court rules and revamped forms. The forms are used to intimate the seeking of a section 11 order<sup>1</sup> to a child in a family action and to seek the child's views. The rules, for the first time, introduce detailed provision about the timing and procedure for sending a form to a child. The committee has also developed detailed guidance to assist court users on how to complete

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<sup>1</sup> [Children \(Scotland\) Act 1995](#)

the new forms. The rules were made on 28 March 2019 and came into force on 24 June 2019.

## Review of rules

The Council is committed to the review of new rules it develops. It notes however, that this work is frequently as time-consuming as the initial development of the rules and that this needs to be reflected in its programme of work. Accordingly, in the face of competing demands, review work will be progressed as and when resources allow or there is a clear and pressing need for rules to be amended. No reviews were concluded in 2018/2019. It is anticipated that the following rules will be reviewed in 2019/2020:

### *Act of Sederunt (Simple Procedure) 2016; and Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016*

A summary of the Council's work on the reviews of the core Simple Procedure Rules and the Personal Injury Pre-action Protocol is set out in Key achievements and ongoing work (page 10). **This work will be ongoing during 2019/2020.**

### *Sheriff Appeal Court Rules: 2015 No.356 Act of Sederunt (Sheriff Appeal Court Rules) 2015*

At the request of the Sheriffs Principal, the Council agreed to bring forward a review of the Sheriff Appeal Court Rules. The Rules Rewrite Drafting Team and the Secretariat have worked with the Sheriffs Principal to develop proposals. **This work will continue during 2019/2020.**

## Formal Recommendations

One of the Council's functions is to advise and make recommendations on the development of and changes to the civil justice system in Scotland. Section 3 of the 2013 Act provides the Council with the power to take such action as it considers necessary or desirable in pursuance of its functions. This includes provision at section 3(2) (f) that the Council may "*provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system*".

The Council's Annual Report must include a summary of the recommendations made by the Council during the period covered by the report<sup>2</sup>.

**During the reporting year 2018/2019, the Council made no recommendations under Section 3(2) (f) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.**

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<sup>2</sup> Section 5(3) of 2013 Act



## Summary of Rules Prepared

This section provides details of the draft rules submitted by the Council to the Court of Session during 2018/2019 for consideration. It contains rules submitted in relation to all of the Council's work areas described above.

- The [Act of Sederunt \(Fees of Messengers-at-Arms, Sheriff Officers and Shorthand Writers\) \(Amendment\) 2018](#) was made on 18 April 2018 and came into force on 4 June 2018. The Act of Sederunt increases the fees chargeable by 2.6.% in the Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992, Rules of the Court of Session 1994 and for the Table of Fees in schedule 1 of Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) and Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002.
- The [Act of Sederunt \(Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court\) \(Amendment\) 2018](#) was made on 6 June 2018 and came into force on 24 September 2018. The Act of Sederunt amends the fees that are prescribed in the tables of solicitors' fees in Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993, in the Rules of the Court of Session 1994 and in Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court) 2015.
- The [Act of Sederunt \(Simple Procedure Amendment\) \(Miscellaneous\) 2018](#) was made on 12 June and came into force on 30 July 2018. This Act of Sederunt amends the procedure to be followed in simple procedure cases by providing for a 'Time to Pay Application' as a form of response. The instrument also sets out a new procedure to recall a decision and makes other minor amendments.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Jury Trials\) 2018](#) was made on 5 September 2018 and came into force on 21 September 2018. This Act of Sederunt amends Rule 37.2 of the Rules of the Court of Session 1994 to alter the time limits applicable for parties requesting the issue of the jury precept in civil jury trials in the Court of Session.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Protective Expenses Orders\) 2018](#) was made on 15 November 2018 and came into force on 10 December 2018. This Act of Sederunt amends the rules on Protective Expenses Orders ('PEOs') in Scotland. Specifically it provides a new process for determination of applications including lodging opposition to applications; provisions for granting PEOs in certain proceedings relating to the environment; provides a new definition of when related proceedings are to be considered as 'prohibitively expensive' to the applicant seeking protection; and provides limits on liability for expenses and for them to be lifted or lowered on cause shown. It also makes provision for circumstances whereby liability for expenses is limited to £500.

- The [Act of Sederunt \(Child Support Rules Amendment\) \(Disqualification\) 2018](#) was made on 5 December 2018 and came into force on 21 January 2019. 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 United Kingdom passport if he or she fails to pay child support maintenance.
- The [Act of Sederunt \(Computer Evidence in the Sheriff Court\) \(Revocation\) 2019](#) was made on 30 January 2019 and came into force on 5 March 2019. This Act of Sederunt revokes, so far as still in force, the Act of Sederunt (Computer Evidence in the Sheriff Court) 1969 and the Act of Sederunt (Computer Evidence in the Sheriff Court Amendment) 1970.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Sanctions and Anti-Money Laundering\) 2019](#) was made on 26 February 2019 and came into force on 29 March 2019. This Act of Sederunt extends the existing provisions of Chapter 96 of the Rules of the Court of Session 1994 which deal with financial restrictions proceedings under the Counter Terrorism Act 2008 to apply to sanctions proceedings under the Sanctions and Anti-Money Laundering Act 2018. The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Sanctions and Anti-Money Laundering\) \(No.2\) 2019](#) inserted a provision to revoke Chapter 101 of the Rules of the Court of Session 1994 which should have been included in the earlier Act of Sederunt.
- The [Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment\) \(Taxation of Judicial Expenses\) 2019](#) was made on 27 February 2019 and came into force on 29 April 2019. This Act of Sederunt makes procedural provisions for the taxation of judicial expenses and makes provision for revocations of, and amendments to, rules consequential on the coming into force of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 and amendments to the rules of procedure governing the taxation of accounts of expenses in civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court.
- The [Act of Sederunt \(Taxation of Judicial Expenses Rules\) 2019](#) was made on 27 February 2019 and came into force on 29 April 2019. This Act of Sederunt frames the relevant tables of fees to provide for unit-based charging. In particular this Act of Sederunt makes provision regarding the taxation of accounts of expenses as between party and party in civil proceedings; the reimbursement of losses and expenses incurred by witnesses cited to attend court in such proceedings; the fees payable to shorthand writers and transcribers in relation to such proceedings and the sums chargeable against a debtor in respect of the work of a solicitor in instructing steps in diligence.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2019](#) was made on 6 March 2019 and came into force on 6 April 2019. This Act of Sederunt amends the Court Rules in consequence of the

new Insolvency Rules and makes provision about the application procedure for certain related court remedies.

- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Regulation \(EC\) No. 44/2001\) \(Transitional Provisions\) 2019](#) was made on 11 March 2019 and came into force on 28 March 2019. This Act of Sederunt amends the application of Part V of Chapter 62 of the Rules of the Court of Session on the recognition, registration and enforcement of foreign judgments.
- The [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2019](#) was made on 28 March 2019 and came into force on 25 April 2019. This Act of Sederunt amends the Act of Sederunt (Simple Procedure) 2016 to include references on the response forms to the Civil Online portal on the Scottish Courts and Tribunals Service website. From 25th April 2019, respondents will be able to complete a Response Form through Civil Online.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment\) \(Views of the Child\) 2019](#) was made on 28 March 2019 and came into force on 24 June 2019. The Act of Sederunt inserts new forms that are used to seek the views of a child in a family action and makes detailed provision about the procedure to be followed when sending one of these forms to a child. The forms replace existing Forms F9 and CP7 in Chapters 33 and 33A respectively of the Ordinary Cause Rules and Form 49.8-N in Chapter 49 of the Rules of the Court of Session.

## Research

### *Simple Procedure Rules*

In January 2018, the Council considered and approved a research specification developed by the Access to Justice Committee as part of its ongoing review of the Simple Procedure Rules. The aim of the research was to obtain views from party litigants who have used simple procedure since it commenced in November 2016. In particular, the committee was interested in the accessibility and usability of the rules and forms. Following a procurement exercise, Professor Tom Mullen and Halle Turner of the University of Glasgow conducted research into the experiences of party litigants using simple procedure. This research has assisted the committee to identify potential changes to the rules, forms, or standard orders that should be made to make simple procedure more efficient and accessible.

## Consultations

During 2018/2019, the Council undertook the following consultations:

### *Simple Procedure Rules*

In February 2018, the Council launched a consultation as part of the Access to Justice Committee's review of the Simple Procedure Rules. The consultation closed on 31 May 2018. The twenty-five consultation responses received included responses from advice agencies, the judiciary, legal profession and the insurance industry as well as a number of individuals. The committee considered the consultation responses along with the research report (discussed under [Research](#) above) and other available evidence to assist it in identifying proposed changes to the rules, forms, or standard orders that could be made to make simple procedure more efficient and accessible.

### *Consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court*

In May 2018, the Council launched a public consultation as part of the Family Law Committee's review of the case management of family and civil partnership actions in the sheriff court. The consultation closed on the 22 August 2018. All consultation responses were analysed: twenty responses were received including the judiciary, professional legal bodies, third sector, national public bodies and arbitration/mediation bodies as well as a law firm, academic researcher and the public. The sub-committee considered the responses in detail and reported back to the committee with recommendations for procedural changes.

# Summary of Key priorities for 2019/2020

## Key priorities for 2019/2020

Under section 5 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, the Council must prepare an annual plan setting out its objectives and priorities for each yearly period beginning on 1 April before the start of that period (“the programme”) which must be laid before the Scottish Parliament.

The Council has identified its work priorities for the coming year some of which are discussed throughout this report. These can be summarised as:

<b>High</b>	<ul style="list-style-type: none"> <li>• Brexit</li> <li>• Rules Review: Act of Sederunt (Simple Procedure) 2016</li> <li>• Case management in sheriff court family actions</li> <li>• Implementation of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018</li> <li>• Judicial rate of Interest</li> <li>• Rules of the Court of Session: Chapter 42A: Case management of certain personal injuries actions</li> <li>• Proceeds of Crime Act - Part 11 Order</li> <li>• Review of Inner House Rules</li> <li>• Extension of Simplified Divorce</li> </ul>
<b>Medium</b>	<ul style="list-style-type: none"> <li>• Lay representation, lay support and party litigants</li> <li>• Compulsory pre-action protocols: clinical negligence</li> <li>• Compulsory pre-action protocols: disease</li> <li>• Ordinary Cause Rules: procedures for appointment of assessors under the Equality Act</li> <li>• Rules Review: Sheriff Appeal Court Rules: 2015 No.356 Act of Sederunt (Sheriff Appeal Court Rules) 2015</li> </ul>
<b>Low</b>	<ul style="list-style-type: none"> <li>• EU Small Claims - Implementation of EU regulation 2015/2421</li> </ul>

## Future Meetings

The Council meets up to four times per year. Future meeting dates for 2019/2020 are:

- Monday 09 September 2019
- Monday 18 November 2019
- Monday 17 February 2020

# Governance and Expenditure

## Governance

The 2013 Act sets out the statutory framework for the Council and provides that direction and oversight of the Council, in general terms, rests with the Lord President.

Within the framework of the 2013 Act, the Council has broad powers to regulate its own proceedings and those of its committees. To that end, it has adopted Standing Orders which set out how the Council and its Committees will operate and which include a Code of Conduct for members. Membership of Council committees is set by the Council and each committee operates within a remit set by the Council. These are subject to annual review. Committees provide regular reports to the Council on their activity and make recommendations about policy or draft rules when appropriate. The Council's Standing Orders and membership of the Council and all its committees are published<sup>3</sup> on the Council's website.

## Transparency

Each year, the Council must prepare, and lay before the Scottish Parliament an annual programme setting out its objectives and priorities; and an annual report on its activities.

The annual programme may be combined with the previous year's annual report, in accordance with section 5 of the 2013 Act.

Civil court rules are laid before the Scottish Parliament and are subject to parliamentary scrutiny, although the majority are not subject to the approval of or annulment by parliament. Once made by the Court of Session, they are considered and reported on by the Delegated Powers and Law Reform Committee of the Scottish Parliament. This scrutiny has been of assistance to the Council in the further preparation, and reviewing of, draft rules.

The Council operates in an open and transparent manner and is subject to the provisions of the Freedom of Information (Scotland) Act 2002. The Council provides statistical returns to the Commissioner regarding its handling of requests on a regular basis.

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<sup>3</sup> [Scottish Civil Justice Council Standing Orders](#)

The Council is subject to and complies with EU and domestic data protection legislation.

The Council conducts regular reviews of its performance and working arrangements as part of the preparation of its annual report and work programme.

### **Publications and records management**

The Council is listed under Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (“FOISA”). The Council’s Publication Scheme and Guide to Information was revised in October 2017 to ensure compliance with the new 2017 version of the Commissioner’s Model Publication Scheme.

The Council’s Records Management Plan (‘RMP’) has also been revised to ensure statutory compliance under the terms of the Public Records (Scotland) Act 2011. The SCTS has a duty under section 62 of the Judiciary and Courts (Scotland) Act 2008 to provide property, services and staff as required for the Council. On that basis, the Council’s RMP has been incorporated into the revised SCTS RMP and a separate Annex has been included for the Council’s records preservation and destruction schedule. The Council’s RMP is a ‘living document’ and is subject to regular review and updated as required.

### **Staffing**

The staffing complement, which includes the secretariat and legal support from the Lord President’s Private Office, is provided by the Judicial Office for Scotland (a distinct arm of the SCTS, which provides support to the judiciary).

The staffing commitment for 2018/2019 was as follows:

#### Secretariat

Secretary (0.3 Full Time Equivalent)  
Deputy Secretary (0.5 Full Time Equivalent)  
Policy Manager (Full time)  
2 Policy Officers (Full time)  
Secretariat Business Manager (Full time)

#### Lord President’s Private Office

Rules Rewrite Drafting Team: (2.6 Full Time Equivalent solicitors)  
Legal Secretariat (1.8 Full Time Equivalent Solicitors)

The staffing commitment for 2019/2020 remains the same.

Depending on the outcome of the EU negotiations on Brexit and timescales involved, there may be additional demands of the Council and on staffing resources for both the Council’s secretariat and the Lord President’s Private Office.



## Summarised Expenditure for 2018/2019

The non-staffing resources allocated to the Council during 2018/2019 were £85,000 for operating costs.

<b>SCJC Annual Expenditure 2018/2019*</b>			
<b>Category</b>	<b>Description</b>	<b>Budget £</b>	<b>Expenditure £**</b>
Consultation and research	Public consultations can be dealt with largely electronically, however, provision is included for consultation and research in order that independent advice can be sought to analyse responses, or undertake surveys / structured interviews / consultation events etc.  Occasional research may be commissioned directly from subject matter experts to support some elements of the work programme.	70,000	28,849
General running costs	General running costs of the Council and Committees (e.g. catering, hospitality, publications, publicity, photocopying, stationery)	13,000	3,802
Expenses	Reimbursement of Council and Committee members' travel & subsistence, additional expenditure and financial loss.	2,000	728
Recruitment and training	Ongoing recruitment of and training for new Council members.	2,000	0
<b>TOTAL</b>		<b>85,000</b>	<b>33,379</b>

\*The SCJC's staffing budget is administered by SCTS and is not included in this table.

\*\*Only the actual expenditure incurred during the period is shown. Any commitment to spend not yet paid will be recorded as expenditure for the year 2018/2019. All figures are rounded up to the nearest £.

## Annual budget 2019/2020

The Council has been allocated £73,000 for non-staffing operating costs, as detailed in the table below, during 2018/2019 to assist it in carrying out its functions. The Council's budget allocation is subject to review by the SCTS.

<b>SCJC Annual Budget 2019/2020</b>		
<b>Category</b>	<b>Description</b>	<b>Budget £</b>
Consultation and research	Public consultations can be dealt with largely electronically, however, provision is included for consultation and research in order that independent advice can be sought to analyse responses, or undertake surveys / structured interviews / consultation events etc.  Occasional research may be commissioned directly from subject matter experts to support some elements of the work programme.	60,000
General running costs	General running costs of the Council and Committees (e.g. catering, hospitality, publications, publicity, photocopying, stationery)	11,000
Expenses	Reimbursement of Council and Committee members' travel and subsistence, additional expenditure and financial loss.	2,000
<b>TOTAL</b>		<b>73,000</b>

# Communications, freedom of information and engagement

## Communications and engagement

The Council continues to promote its work activity to practitioners and users of the civil justice system, and seeks to engage with other justice organisations, both public and voluntary.

The Council's website continues to play a key role in communicating Council activity. All official publications, details of Council and committee meetings, agendas and civil court rules prepared by the Council, are available online. Whenever appropriate, the Council publishes policy papers online. The Council also has a Twitter account which informs followers of the Council's work.

The Council's newsletter, *Update*<sup>4</sup>, is published online every quarter and is distributed to interested parties. It provides updates on the work of the Council and its committees.

## Records Management Plan

To support its members and committees with obligations under Data Protection legislation for the storing of records, the Council agreed and published a Records Management Plan ("RMP") in February 2014. In September 2015, the Council was added to the list of named public authorities to which the terms of the Public Records (Scotland) Act 2011 apply. Under the terms of the 2011 Act, public authorities listed at the Schedule to the Act are required, under section 1, to prepare a records management plan, submit that plan to the Keeper of the Records of Scotland for agreement, and ensure that its public records are managed in accordance with the plan. It was agreed with the Lord President that it would be prudent for the Council, along with the Scottish Sentencing Council and the Criminal Courts Rules Council to incorporate the Council's RMP into a revised Scottish Courts and Tribunals Service RMP<sup>5</sup> and to have a separate Annex for the Council's preservation and destruction schedule<sup>6</sup>.

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<sup>4</sup> [SCJC Publications](#)

<sup>5</sup> [SCTS Records Management Plan](#)

<sup>6</sup> [SCJC Preservation and Destruction 2019/2020](#)

## Freedom of information

The Council operates in an open and transparent manner and is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Council adopted the Scottish Information Commissioner's Model Publication Scheme ("MPS") in 2013. The Council's Publication Scheme and Guide to Information<sup>7</sup> has since been updated in line with the 2018 MPS published by the Scottish Information Commissioner on 29 November 2018. The Council will keep the Guide under review and will update it to reflect any changes made in any future MPS. The Council has received nine requests for information under FOISA in 2018/2019. All requests were dealt with within the statutory timescales.

Number of requests received under FOISA 2018/2019	
Members of the public	9
<b>TOTAL</b>	<b>9</b>

Outcome of requests received under FOISA 2018/2019	
Information supplied	2
Information partially supplied	0
Information withheld	3
Insufficient information provided by the requester to respond	0
Information not held	4
Request withdrawn	0
<b>TOTAL</b>	<b>9</b>

## Working with interested parties

The Council is committed to working with other justice organisations and parties with an interest in the civil justice system. The Council actively seeks to engage with groups and individuals and will draw from their experience through its committees and working groups and through informal and targeted consultation where appropriate.

<sup>7</sup> [Publication Scheme and Guide to Information](#)

# Further information and contacts

Full information about the Council and its activities are available at [www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk). The website is updated regularly with news about the Council and provides full details of Council and committee meetings, publications, draft rules under consideration and new rules made.

The Council publishes a newsletter, *Update*, providing information about ongoing work. *Update*, is published around four times per year and can be accessed via the [publications](#) page of the website. If you would like to be added to our email list to receive links to future editions, please contact us.

You can also follow us on Twitter @ScottishCJC for the latest updates.

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

Email	<a href="mailto:scjc@scotcourts.gov.uk">scjc@scotcourts.gov.uk</a>
Telephone:	0131 240 6776
Post:	Scottish Civil Justice Council Parliament House Edinburgh EH1 1RQ

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## August 2019

Scottish Civil Justice Council  
Parliament House  
Parliament Square  
Edinburgh  
EH1 1RQ



Scottish  
Civil Justice  
Council

[www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)