



Scottish
Civil Justice
Council

Annual Programme 2016/17

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CONTENTS

| | Page |
|---------------------------------------|-------------|
| Introduction..... | 3 |
| Guiding Principles..... | 6 |
| Priorities..... | 6 |
| Resources..... | 13 |
| Governance..... | 14 |
| Working with Interested Parties..... | 15 |
| Business Plan 2016/17..... | 16 |
| Further Information and Contacts..... | 24 |

Introduction

The Scottish Civil Justice Council

1. 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, replacing the Court of Session Rules Council and the Sheriff Court Rules Council. 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.

Functions and powers

2. The Council's functions include:
 - 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 on the development of and changes to the civil justice system in Scotland.
3. The Council has broad powers to help it carry out its functions including the ability to make recommendations to the Scottish Ministers, conduct consultations and commission research. It is also able to take into account proposals for reform when preparing draft rules.

Who we are

4. Our membership encompasses a range of interests and experiences across the civil justice system. As well as members of the judiciary and legal practitioners, the Council includes consumer representatives and an academic. In addition, the Chief Executives of the Scottish Courts and Tribunals Service and the Scottish Legal Aid Board and a member of staff of the Scottish Government hold standing appointments.

5. The tenure period for inaugural members expired in May 2016. From 01 June 2016, the membership of the Council is as follows:

| | |
|---------------------------------------|---|
| The Right Hon. Lord Carloway | Lord President and Lord Justice General, Chairman |
| Eric McQueen | Chief Executive, Scottish Courts and Tribunal Service |
| Colin Lancaster | Chief Executive, Scottish Legal Aid Board |
| Jan Marshall | Scottish Ministers' appointee |
| The Right Hon. Lord Menzies | Judicial member, Deputy Chair |
| The Hon. Lord Tyre | Judicial member |
| The Right Hon. Lord Boyd of Duncansby | Judicial member |
| Sheriff Principal Abercrombie | Judicial member |
| Sheriff Hughes | Judicial member |
| Sheriff S Murphy | Judicial member |
| Kenneth Forrest | Advocate member |
| Paul Reid | Solicitor member |
| Jacqueline Harris | Solicitor member |
| Joel Conn | Solicitor member |
| Ian Maxwell | Consumer representative member |
| Jane Williams | Consumer representative member |
| Employment Judge Joseph d'Inverno | Lord President member |
| Brandon Malone | Lord President member |

6. 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 Council members, the following observers attend Council meetings:

| | |
|--------------------|--|
| Craig McCorkindale | Making Justice Work 1 Programme Manager |
| Jane MacDonald | Legislation Implementation Team, Scottish Courts and Tribunals Service |
| Gillian Prentice | Deputy Principal Clerk of Session, Scottish Courts and Tribunals Service |

Secretariat

7. Secretariat for the Council is provided by the Scottish Courts and Tribunals Service.

| | |
|-----------------------------|----------------|
| Secretary | Roddy Flinn |
| Deputy Secretary | Mandy Williams |
| Business and Policy Manager | Karen Stewart |

Policy Officers

Susan Brodie

Anne Hampson

Bridget Lee

8. Legal support is provided by the Lord President's Private Office, which is staffed by government lawyers.
9. A specialist drafting team, made up of government lawyers, has been recruited to carry out the rules revisions under the Rules Rewrite Project.

Meetings

10. The SCJC meets 6 times a year. Future meeting dates are:

- Monday 11 July 2016 at 10 am
- Monday 03 October 2016 at 10 am
- Monday 21 November 2016 at 10 am
- Monday 23rd January 2017 at 10am
- Monday 20th March 2017 at 10am
- Monday 29th May 2017 at 10am
- Monday 10th July 2017 at 10am
- Monday 02nd October 2017 at 10am
- Monday 20th November 2017 at 10am

Committees and Working Groups

11. The SCJC may set up committees and ad hoc working groups to assist it in carrying out its functions. The committees which have been established are:

- Access to Justice Committee
- Costs and Funding Committee
- Family Law Committee
- Information and Communications Technology Committee
- Personal Injury Committee
- Rules Rewrite Committee

12. The SCJC has also set up a working group to consider the implementation of The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

Guiding principles

13. In carrying out its functions, the Council must have regard to the following principles:

- 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 in the civil courts should be as similar as possible, where appropriate; and
- alternative methods of dispute resolution should be promoted, where appropriate.

Priorities

14. The Council will give particular focus to the following matters during 2016/17:

- continued implementation of major justice system reform projects;
- consideration, and preparation for implementation, of new legislation;
- ongoing preparation of rules revisions necessary to implement primary and subordinate legislation and developments in case law (this is the 'care and maintenance' element of the rules); and
- consideration of potential improvements to procedures, particularly in respect of those aspects of civil courts reform which can be taken forward without primary legislation.

Justice System Reform

15. There are four major initiatives which continue to have a direct impact on the work of the Council over the course of the forthcoming years. These are:

- implementation of the Scottish Civil Court Review (SCCR) recommendations including implementation of the Courts Reform (Scotland) Act 2014;
- the recommendations of Sheriff Principal Taylor's Review on Expenses and Funding in Civil Litigation in Scotland;
- implementation of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 and
- the Tribunals (Scotland) Act 2014.

16. During 2016/17, the Council will continue to give particular priority to these justice reform projects, with focus to be given to the preparation of the rules required for implementation of civil courts reform and the consolidation, simplification, and harmonisation of the rules of the civil courts in Scotland (under the Rules Rewrite Project).

17. This is anticipated to be the main focus of the forward work programme for the Council over the next three to five year period. Accordingly, a large proportion of the Council's work sits within the Scottish Government's *Making Justice Work* Programme (MJW). This is a major programme of work through which the Scottish Government, in conjunction with key justice organisations, is taking forward these and other court reforms.

Civil Courts Reform and the Courts Reform (Scotland) Act 2014

18. The Courts Reform (Scotland) Act 2014 received Royal Assent on 11 November 2014.

19. The Act introduced major structural reform to change the way civil cases and summary criminal cases are dealt with by the Scottish courts. The key changes contained in the Act can be summarised as follows:

- (a) redistribution of civil business from the Court of Session to the sheriff courts through increasing the privative jurisdiction of the sheriff court from £5,000 to £100,000;
- (b) the creation of a new judicial tier (called "summary sheriffs") with jurisdiction in certain civil cases and summary criminal cases;
- (c) the creation of a Sheriff Appeal Court to hear civil appeals from the sheriff courts and summary criminal appeals;
- (d) the creation of a specialist personal injury court with an all-Scotland jurisdiction;
- (e) improving procedures for judicial review within the Court of Session; and
- (f) conferring new rule-making powers on the Court of Session to facilitate modernisation of procedures and encourage settlement.

20. The Council agreed that the following suites of rules changes should be taken forward as a priority:

- increase to the privative limit;
- judicial structures (introduction of the new judicial offices of summary sheriff and Appeal Sheriff);
- creation of a Sheriff Appeal Court;
- creation of a specialist personal injury court with civil jury trials;
- simple procedure;
- judicial case management;
- rules for enforcement / sanctions; and
- creation of compulsory pre-action protocols.

21. During 2015/16, rules of court, submitted to the Court of Session by the Council, were made in relation to the following areas:

- Increase to the privative limit – to determine the value of an order sought in proceedings;
- Creation of a Sheriff Appeal Court (SAC) to hear civil appeals;
- The creation of a specialist personal injury court, with civil jury trials – rules include provision for “e-motions” and case management; and
- Judicial Review – rules prepared by the Rules Rewrite Committee were submitted by the Council to the Court of Session and came into force on 22 September 2016.

22. It was agreed that no rules of court were necessary in relation to judicial structures or judicial case management in order to implement the terms of the 2014 Act.

23. In 2016/17, work will continue in relation to the following priorities in line with the relevant commencement dates:

- Simple procedure – this is being progressed by the Access to Justice Committee. The Committee consulted on splitting the new rules into two sets, the Simple Procedure Rules and the Simple Procedure (Special Claims) Rules. Strong views were expressed by stakeholders that the second set of rules be consulted upon. It has therefore been agreed that only the Simple Procedure Rules will be commenced in November 2016 and the Simple Procedure (Special Claims) Rules will be commenced in time for the beginning of the legal year 2017 in order to allow informal consultation on the draft rules;
- Rules for enforcement/sanctions – this is being considered by the Costs and Funding Committee as part of implementation of Sheriff Principal Taylor’s Review on the costs and funding of civil litigation in the Court of Session and sheriff court;
- The creation of compulsory pre-action protocols – this area has been considered in the context of Personal Injury actions. A broader approach may be taken in the longer term. The Personal Injury Committee will submit proposals to the Council in July 2016 in relation to a personal injury pre-action protocol for claims under £25,000. Further proposals will be submitted for additional pre-action protocols after further detailed consideration and consultation;
- Case management – recent innovation in family procedure came with the insertion of chapter 33AA to the sheriff court rules which introduced pre-hearing conferences and case management hearings. The Family Law Committee has been considering these developments in more detail and intend to undertake research in this area;
- “Sweep up” - the Rules Rewrite Committee will continue to consider if additional rules are required to support the remaining provisions of the 2014 Act.

24. As well as drafting rules required to support implementation of the provisions of the 2014 Act, the Council has also been tasked with carrying out a Rules Rewrite Project to consolidate, harmonise and simplify the rules in Scotland's civil courts. This work is being led by the Rules Rewrite Committee.
25. During 2015/16, the Council commenced a structural review for the Rules Rewrite Project and a scoping paper has recently been approved by the Council. The paper details a project plan for the rewrite and provides for the following five stage process:
- the preparation of discussion papers,
 - the preparation of procedural narratives,
 - the agreement of a draft structure,
 - the preparation of policy instructions on particular matters, and
 - the agreement of draft rules.

Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland

26. The Report of Sheriff Principal Taylor's Review of the Expenses and Funding of Civil Litigation in Scotland was published on 11 September 2013. The need for such a review was identified by the SCCR.
27. Sheriff Principal Taylor has made a total of 85 recommendations. These are wide-ranging and cover such matters as: recovery of judicial expenses; the employment of counsel in the sheriff court; fees for expert witnesses; the introduction of qualified one way costs shifting and increased availability of protective expenses orders; arrangements for Before the Event Insurance, speculative fee arrangements and damages based agreements; referral fees; and arrangements where litigation is funded by a third party.
28. The Council established a Costs and Funding Committee to consider, among other things, the full range of Sheriff Principal Taylor's proposals. As well as considering the individual proposals, the Committee examined which recommendations might be taken forward through court rules (which would fall to the Council to prepare) and which might require primary legislation (which would need to be considered by the Scottish Government). The Committee reported to the Council in March 2015 setting out its proposed approach to implementation of the Taylor Report. The Committee will continue to work on the production of a policy discussion paper, which will outline its policy proposals for consideration by the Council. Once agreed, the drafting process will commence.
29. Sheriff Principal Taylor also recommended that the Council should form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses. From 1 April 2015, the Council's statutory functions were extended to give full effect to this recommendation and the remit of the Costs and Funding Committee was reviewed to include this function.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

30. Section 36 of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (the 2016 Act) provides an enabling power to the Court of Session regarding practice, procedure and incidental/ancillary matters pertaining to inquiries under the Act. Section 36(6) introduces Schedule 1 which amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. This amendment confers responsibility upon the Council for the review of practice and procedure followed in inquiry proceedings under the 2016 Act and this includes the drafting of inquiry procedure rules. These provisions came into force on 15 January 2016.
31. In March 2016, the Council established a working group to consider the implementation of the 2016 Act. The working group will make proposals for draft inquiry procedure rules for consideration by the Council.

Tribunals (Scotland) Act 2014

32. The Tribunals (Scotland) Act 2014 received Royal Assent on 15 April 2014. The Act provides for the creation of a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as Head of the Scottish Tribunals. The key reforms contained in the Act are:
- (a) the creation of a two-tier structure for tribunals - a First-tier Tribunal for hearing first decision cases and an Upper Tribunal Scotland, primarily to hear appeals from the First-tier;
 - (b) provisions to bring judicial leadership for tribunals under the remit of the Lord President;
 - (c) the creation of a new office, the President of the Scottish Tribunals, with responsibility for ensuring tribunal business runs effectively and efficiently; and
 - (d) the establishment of new independent appointment arrangements.
33. Of particular relevance to the Council are the provisions within the Act which confer responsibility on the Court of Session for the making of tribunal rules and those which confer responsibility for preparation of those rules on the Council. The Act provides for a mandatory Council committee for tribunals and for the Council membership to include the Tribunals President and a tribunals' representative.
34. The Council will need to consider how it will prepare for these additional functions and whether there is any requirement for a rewrite of tribunal rules (such as that being undertaken for the civil court rules) in due course. The Financial Memorandum accompanying the Tribunals (Scotland) Act 2014 suggests that the Council would not take on functions in respect of tribunals before 2017, in which case preparatory work would need to begin during this year.

Consideration and preparation for implementation of new legislation

35. In addition to the work underway in respect of the major justice system reforms identified above, particular consideration needs to be given to primary and EU legislation with regard to the potential requirement for new or amended rules.
36. The Council considers Scottish, UK and EU legislation and works with the three UK jurisdictions to discuss the co-ordination of consequential amendments to rules with implementation timescales. The scale of these projects can vary from minor and technical consequential amendments to rules, to significant changes to existing rules or the introduction of wholly new procedures.
37. Following the recent 2016 election, the legislative timetable for the Scottish Parliament has still to be agreed. The Scottish Government has advised the Council that it is still continuing with implementation of the Courts Reform (Scotland) Act 2014, the Succession (Scotland) Act 2016 and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. It has consulted on a draft Order in Council that makes provision for the transfer of specified functions of the Employment Tribunals to the First-tier Tribunal for Scotland, opposite sex civil partnerships and reform of the law on succession and will report in due course. Prior to the pre-election period it published a draft Limitation and (Childhood Abuse) Scotland Bill to remove the time bar for survivors of historical child abuse.
38. Looking forward, there are a number of commitments in the Government's manifesto in the area of civil law which would require legislation in the new Parliamentary term. These include reform of gender recognition law, review of regulation of the legal profession, reform of succession law, removal of the time bar for survivors of historical child abuse (in terms of the draft Bill mentioned in the previous paragraph), implementation of Sheriff Principal Taylor's review of the costs and funding of civil litigation, reform of legal aid and a review of aspects of family law. Any or all of the above could lead to the introduction of a new Bill to the Scottish Parliament, which would require scrutiny to consider the implications for the civil justice system in Scotland.
39. The other areas of work which are expected to be of particular significance (either in terms of the potential impact for court users and practitioners or on the workload of the Council) in this regard are as follows:

Previously enacted Bills

Housing (Scotland) Act 2014
 Courts Reform (Scotland) Act 2014
 Human Trafficking and Exploitation (Scotland) Act 2015
 Succession (Scotland) Act 2016
 Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.
 Bankruptcy (Scotland) Act 2016

UK Legislation

Intellectual Property Act 2014
 Counter-Terrorism and Security Act 2015
 Serious Crime Act 2015
 Small Business, Enterprise and Employment Act 2015
 Psychoactive Substances Act 2016

Ongoing rules revisions necessary to implement primary and subordinate legislation and developments in case law

40. In addition to the major areas of work identified above, the Council has a continuing function to review rules in light of legislative changes. This ongoing work is detailed in the relevant section of the Business Plan (at pages 16-23).
41. The Council will be proactive in relation to legislative reform to ensure that due consideration is given to draft rules in accordance with agreed implementation timetables. The majority of rules changes emanate from legislation initiated by the Scottish Government. The Council is therefore working with the Scottish Government to ensure these changes can be properly co-ordinated so that progress on civil courts reform can be maintained.
42. Changes to practice and procedure may also be required in light of developments in case law at Scottish, UK and European level. The Council will give consideration to such matters as the judicial rate of interest following the decision of the Inner House in *Farstad AS v Enviroco Limited* [2013].

Consideration of improvements to procedures and system improvements

43. The Council will consider changes to practice and procedure in response to policy initiatives, by specific request, or of its own accord.
44. In addition to the work described above, Council committees are currently carrying out the following work with a view to reporting to the Council about the policy to be adopted during the course of 2016/17:
- comparative research to establish what might be done with available and potential technology in the Scottish civil courts including online resolution of civil disputes (ICT Committee);
 - review of the arrangements for the use of forms of alternative dispute resolution in the Scottish civil courts (Access to Justice Committee); and
 - review of the arrangements for actions conducted by party litigants, lay representatives and lay supporters, and the information and guidance available to each (Access to Justice Committee).

Resources

| SCJC Resource Allocation 2016/17 | | |
|----------------------------------|--|----------------|
| Category | Description | £ |
| Staffing (Secretariat) | Deputy Secretary Business and Policy Manager 3 Policy Officers 0.2 Communications Officer | 225,909 |
| Staffing (Legal) | 2 (Full Time Equivalent) Solicitors from LPPO 4.7 (Full Time Equivalent) solicitors for the Rules Rewrite Drafting Team | 469,334 |
| 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. | 35,000 |
| General Expenses | Other general costs of running the Council and committees e.g. stationery, catering etc. | 12,500 |
| Expenses | Reimbursement of Council and committee members' Travel & Subsistence, additional expenditure and financial loss. | 5,000 |
| Recruitment and Training | Ongoing recruitment of and training for new Council members. | 3,000 |
| Venue Hire and Hospitality | Occasional venue hire, hospitality and publicity costs which may be required for conferences, events, facilitated workshops etc. | 9,500 |
| Total staffing | | 695,243 |
| Total other | | 65,000 |
| TOTAL | | 760,243 |

45. 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. The staffing complement, which includes the Secretariat and legal support from the Lord President's Private Office, are provided by the Judicial Office for Scotland (a distinct arm of the SCTS, which provides support to the judiciary). The costs attached to staffing the Council amount to approximately £695,243 per annum.

46. A specialist drafting team, made up of government lawyers, are now in post to carry out the rules revisions under the Rules Rewrite Project. That team consists of a lead drafter and 3.7 others. The cost of that team is approximately £329,092 per annum for 2016/17.
47. The Council has been allocated an additional £65,000 (as detailed in the table above) during 2016/17 to assist it in carrying out its functions. The Council's budget allocation is subject to review by the SCTS.

Governance

48. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ("the 2013 Act") sets out the statutory framework for the Council and that direction and oversight of the Council, in general terms, rests with the Lord President.
49. 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 committees operates within the 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.

Transparency

50. 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.

51. 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) and once made by the Court of Session are considered and reported on by the Delegated Powers and Law Reform Committee. This scrutiny will be of assistance to the Council in the further preparation, and reviewing of, draft rules.
52. 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 has adopted the Scottish Information Commissioner's Model Publication Scheme and published a guide to information in May 2013. The Council provides statistical returns to the Commissioner regarding its handling of requests on a regular basis.
53. The Council will conduct regular reviews of its performance and working arrangements as part of the preparation of its annual report.

Making Justice Work Programme

54. Given that a large proportion of the work of the Council is overseen by the Scottish Government's MJW Programme, the separate arrangements in place for governance of that programme should be noted. The programme has a supervisory board whose role is to ensure that the justice reform projects within the programme are carried out and the expected benefits delivered. Its membership comprises representatives of: the Scottish Government's Justice Directorate; the Scottish Courts and Tribunal Service; the Crown Office and Procurator Fiscal Service; the Scottish Legal Aid Board; members of the judiciary; and the Association of Chief Police Officers in Scotland (ACPOS).
55. The Secretary to the Council is represented on the MJW 1 Programme Board (Effective Courts and Tribunals) under which the majority of civil courts reform is being taken forward. The MJW Programme features as a standing agenda item at Council meetings.

Working with interested parties

56. The Council recognises the importance of working with other justice organisations and parties with an interest in the civil justice system. The Council will seek to engage with these groups and individuals and will draw from their experience through its committees and working groups and otherwise (through informal or targeted consultation) where appropriate.

Business Plan 2016/17

| Subject | Action | Lead | Key dates |
|------------------------------|---|--|---|
| JUSTICE SYSTEM REFORM | | | |
| Courts Reform Implementation | <p><u>Courts Reform (Scotland) Act 2014</u></p> <p>Simple Procedure (Special Claims) Rules</p> <p>Implementation of the remainder of the Act including lay representation for non-natural persons, vexatious proceedings and interdicts and other orders</p> | <p>Access to Justice Committee in conjunction with the Personal Injury Committee</p> <p>Rules Rewrite Committee in conjunction with other committees as necessary</p> | <p>Summer 2017</p> <p>Commencement Orders awaited; next commencement date anticipated in November 2016</p> |
| | <p><u>Wider SCCR recommendations</u></p> <ul style="list-style-type: none"> • Compulsory pre-action protocols – being considered in the | Personal Injury | Initial proposals for a personal injury pre-action |

| Subject | Action | Lead | Key dates |
|------------------------------|--|--|---|
| | <p>context of personal injury actions in the first instance</p> <ul style="list-style-type: none"> • Rules for enforcement / sanctions to ensure adherence to rules • Judicial case management – being considered in the context of family law actions in the first instance; research to be undertaken in this area during 2016/17 • Alternative Dispute Resolution - review the arrangements for the use of Alternative Dispute Resolution methods in appropriate cases in the sheriff court and the Court of Session | <p>Committee</p> <p>Costs and Funding Committee</p> <p>Family Law Committee</p> <p>Access to Justice Committee</p> | <p>protocol to be submitted to Council in July 2016 with proposals for additional pre-action protocols being submitted in due course</p> <p>Ongoing along with consideration of Taylor review</p> <p>Ongoing</p> <p>Ongoing</p> |
| <p>Rules Rewrite Project</p> | <p>Rules Rewrite Project: project plan provides the following five stage process:</p> <ul style="list-style-type: none"> • the preparation of discussion papers, | <p>Rules Rewrite Committee</p> | <p>Ongoing</p> |

| Subject | Action | Lead | Key dates |
|---|--|---------------------------------|--|
| | <ul style="list-style-type: none"> • the preparation of procedural narratives, • the agreement of a draft structure, • the preparation of policy instructions on particular matters, and • the agreement of draft rules. | | |
| Tribunals (Scotland) Act 2014 | Monitoring of implementation and preparatory work for assumption of new functions | SCJC (Secretariat to monitor) | Preparatory work commenced in 2016 for SCJC functions in 2017 |
| Report of Sheriff Principal Taylor's Review into Expenses and Funding of Civil Litigation in Scotland | Costs and Funding Committee to consider implementation; policy discussion paper to be submitted to the Council for consideration and thereafter drafting process will commence | Costs and Funding Committee | Implementation timescales being considered |
| Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 | FAI working group to consider implementation of the 2016 Act with a view to making proposals for draft inquiry procedure rules | FAI working group | Implementation timescales to be agreed |
| IMPLEMENTATION OF LEGISLATION | | | |
| Consideration of new and recent legislation | In addition to work underway in respect of the major justice system reforms identified above, particular consideration will require to be given to the following legislation with regard to the potential need for consequential amendments to rules: | Council and relevant committees | SCJC Secretariat will liaise with relevant policy teams as to timescales for |

| Subject | Action | Lead | Key dates |
|-------------------------------------|---|-----------------------------|---|
| | <p><i>Acts of the Scottish Parliament</i></p> <ul style="list-style-type: none"> • Housing (Scotland) Act 2014 • Human Trafficking and Exploitation (Scotland) Act 2015 • Succession (Scotland) Act 2016 • Bankruptcy (Scotland) Act 2016 <p><i>UK legislation</i></p> <ul style="list-style-type: none"> • Counter-Terrorism and Security Act 2015 • Intellectual Property Act 2014 • Serious Crime Act 2015 • Small Business, Enterprise and Employment Act 2015 • Psychoactive Substances Act 2016 <p>The Scottish Parliament legislative programme has still to be announced but it is anticipated that there will be new Bills introduced that will require scrutiny to consider the implications for the civil justice system in Scotland.</p> | | implementation |
| Judicial Rate of Interest | The Council is giving consideration to the judicial rate of interest following the decision of the Inner House in <i>Farstad AS v Enviroco Limited</i> [2013] | Costs and Funding Committee | No set timescale |
| IMPROVEMENTS TO PROCEDURES | | | |
| Protective Expenses Orders | Consideration being given to the test and procedure regulating applications for Protective Expenses Orders. | Council | No set timescale |
| Lay representation, lay support and | Review the arrangements for actions conducted by party litigants in the sheriff court and the Court of Session; review the arrangements for lay representation and lay support in the | Access to Justice Committee | Ongoing Recommendations to be made to Council in due |

| Subject | Action | Lead | Key dates |
|---------------------------------|---|-----------------------------|--|
| party litigants | sheriff court and the Court of Session; and review the information and guidance that is available to party litigants, lay representatives and lay support in the sheriff court and the Court of Session. | | course |
| Regulation of fees | Exploration of options and methodologies for assessing and/or reviewing fee provisions. This relates to fees of solicitors, messenger-at-arms, sheriff officers, witnesses and shorthand writers. | Costs and Funding Committee | No set timescale |
| Pursuers' offers | Consideration being given to the introduction of a formal system of pursuers' offers with a view to promoting early settlement | Costs and Funding Committee | No set timescale |
| The Voice of the Child | Consideration being given to improving the method of ascertaining the views of the child in family actions | Family Law Committee | No set timescale |
| Extension of Simplified Divorce | Consideration to be given to the Scottish Government's suggestion that Simplified Divorce proceedings be extended to cases where there are children under 16. Draft rules prepared. | Family Law Committee | Timescales to be confirmed. Council to consult on draft rules alongside Scottish Government consultation |
| Digital reform | Consideration of ongoing policy developments in relation to digital reform including the following: <ul style="list-style-type: none"> • Scottish Government Justice Digital Strategy | ICT Committee | Ongoing |

| Subject | Action | Lead | Key dates |
|---|--|---------------------------------|---|
| | <ul style="list-style-type: none"> Civil Justice Council Report – online dispute resolution in England and Wales for low value civil claims | | |
| Ongoing consideration of policy initiatives | The Council will monitor the development of policy with implications for the civil justice system along with the work of various groups considering matters which also fall within the Council's remit, such as the Inner House Users Group, the Personal Injury Users Group and the Consultative Committee on Commercial Actions. | Council and relevant Committees | SCJC Secretariat will liaise with relevant policy teams and groups as to relevant timescales and revert to the Council as appropriate |
| COMMUNICATIONS AND ENGAGEMENT | | | |
| Communications Strategy | Development and maintenance of communications and engagement strategy. | SCJC Secretariat | Ongoing |
| Stakeholder engagement | Planned activities to foster working relationships and raise awareness of the Council's work including regular publication of newsletter "Update" | SCJC Secretariat | Ongoing |
| SCJC website | Development of the SCJC website, including improvements in branding, site navigation and web analytics. | SCJC Secretariat | Ongoing |
| DEVELOPMENT, TRAINING AND GUIDANCE | | | |
| Records Management | Council added to the schedule to the Public Records (Scotland) Act 2011 in 2015; records management plan to be updated. Consideration also to be given to the Model Publication Scheme Guide, which is due | SCJC Secretariat | Ongoing |

| Subject | Action | Lead | Key dates |
|-------------------------------|--|---|--|
| | to expire in May 2017. | | |
| CORPORATE ACTIVITY | | | |
| Monitoring of Legislation | Scrutiny of current and anticipated Bills before Scottish and UK Parliaments in respect of consequential amendments to rules and potential impact on Council's work programme. In addition, Members' Bills and Scottish Law Commission activity will be kept under review. | <p>SCJC Secretariat will consider in the first instance.</p> <p>Detailed consideration and rules which may be required in consequence will be for the Council or relevant committees.</p> | <p>Ongoing</p> <p>The SCJC Secretariat will liaise with policyholders to discuss implementation timescales in order to co-ordinate the Council's work for the year</p> |
| Monitoring of court judgments | Monitoring of court decisions and developments in case law at Scottish, UK and European level in respect of implications for court rules. | SCJC Secretariat in conjunction with Lord President's Private Office | Ongoing |
| Annual business programme | The Council is under a statutory obligation to prepare an annual business programme for 2017/18 by 31 March 2017 and to lay the programme before Parliament. The annual programme may be combined with the annual report for the preceding year for the purposes | SCJC Secretariat | To be submitted to Council for approval by 31 March 2017 |

| Subject | Action | Lead | Key dates |
|------------------------------------|--|--|--|
| | of laying before Parliament. | | |
| Annual Report | The Council is under a statutory obligation to publish an annual report for 2016/17 as soon as practicable after 31 March 2017 and to lay the report before Parliament. | SCJC | To be submitted to Council for approval by 31 March 2017 |
| Recruitment of members | Ongoing consideration to be given as to whether there is a need for additional representation on the Council in line with the composition requirements set out in the 2013 Act. | Lord President | Ongoing |
| Committee membership and structure | Ongoing consideration to be given to overall structure and composition of committees and remits to ensure an appropriate range of interests and experience are represented and that the work of the Council can be appropriately delegated to its committees; register of interest to be consulted when considering committee appointments. Formal review to take place annually at the Council's strategy meeting. | Committee chairs; appointments approved by the Council | Ongoing |

Further information and contacts

57. Full information about the Council and its activities are available at www.scottishciviljusticecouncil.gov.uk. The website is updated regularly with news about the SCJC and provides full details of Council and committee meetings, Council publications, draft rules under consideration and rules which have been recently made.
58. The Council publishes a newsletter, Update, which provides up-to-date information about its ongoing work. This is published around six times per year and can be accessed via the [publications](#) page. If you would like to be added to our email list to receive links to future editions, please contact us.
59. You can also follow @ScottishCJC to keep up to date with us on Twitter.
60. 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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