



Scottish
Civil Justice
Council



Scottish Civil Justice Council

Annual Report 2021/2022 and Annual Programme 2022/2023

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ISBN: 978-1-9996970-3-7

Report number: 2022/01

Laid before the Scottish Parliament by the Scottish Civil Justice Council in pursuance of section 5(4) of the [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013](#) on 05 August 2022.

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Published by the Scottish Civil Justice Council

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Chair's Foreword

It is a pleasure to introduce the ninth Annual Report of the Scottish Civil Justice Council, covering the period from 1 April 2021 to 31st March 2022.

During this reporting period the Council continued to manage the majority of its business virtually and met seven times over the course of the year. Members have adapted well to the changes in working practice, embracing the use of technology to enable progression of the Council's priorities.



There were eight sets of draft rules prepared by the Council and given legal effect by the Court of Session during this reporting period. This included; new rules introducing the further exceptions to be applied with Qualified One-Way Costs Shifting in personal injury actions; a review of the fee tables for sheriff officers and messengers at arms; new rules to support the insolvency moratoriums introduced as part of the pandemic response; temporary and then permanent rule changes to support the mandatory online submission of Simple Procedure cases; amended rules arising from the changes to the age of criminal responsibility; new rules arising from the introduction of the Office of the Scottish Biometrics Commissioner; and updated rules following completion of our significant review of the Sheriff Appeal Court Rules 2015.

The work programme for our Committees was restarted with substantial progress made on our priorities including: the review of the Simple Procedure Rules 2016; the compulsory pre-action protocols for disease and clinical negligence; the new rules for case management in sheriff court family actions, and the review of the rules for the Inner House of the Court of Session.

As always I am very grateful for the ongoing support of Council and Committee members and all of the support staff whose dedication is so vital to ensuring that the Council's annual work programme is progressed effectively.

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

About us

Introduction

The Scottish Civil Justice Council was established in 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

Under section 2 (1) of the 2013 Act, 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 or 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;
- providing advice and making recommendations to the Lord President on the development of, and changes to, the civil justice system in Scotland; and
- providing advice on any matter relating to the civil justice system that may be requested by the Lord President.

Guiding principles

Under sections 2 (2) and 2 (3) 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 proposals for new rules. These principles are also incorporated into the individual remits of each Council committee and members must have regard to the principles 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 set out in the [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013](#):

Judicial members

- The Lord President (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 and Tribunals 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”)

Other 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”).

The current members of the Council are:

Category	Position	Name
Chair	The Lord President and Lord Justice General, by virtue of that office	The Right Hon. Lord Carloway
Ex officio members	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	Denise Swanson
Judicial members 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 <i>(then Lord Ericht from May 2022)</i> The Hon. Lady Carmichael Sheriff Principal Murray <i>(then Sheriff Principal Ross from May 2022)</i> Sheriff Hughes Sheriff Way
Advocate members Appointed by the Lord President in consultation with the Faculty of Advocates	At least 2 practicing advocates	Lynda Brabender QC Catherine Smith
Solicitor members Appointed by the Lord President in consultation with the Council of the Law Society of Scotland	At least 2 practicing solicitors	Joel Conn Jacqueline Harris
Consumer representative members 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	Thomas Docherty Vacancy
LP members 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 <i>(then Chris Fyffe from June 2022)</i>	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
Access to Justice	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.
Costs and Funding	The Hon. Lord Harrower	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.
Family Law	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.
Personal Injury	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.

Rules Rewrite	The Rt. Hon. Lord Carloway, Lord President	This Committee oversees the management of the Rules Rewrite Project (RRP); and considers issues that do not fall under remit of any other Committee.
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During 2021-22 meetings of the Council and its Committees were held as follows:

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
SCJC meetings	√	√		√			√	√		√		√
Access to Justice Committee			√				√			√		√
Costs and Funding Committee									√			
Personal Injury Committee							√					
Family Law Committee						√						

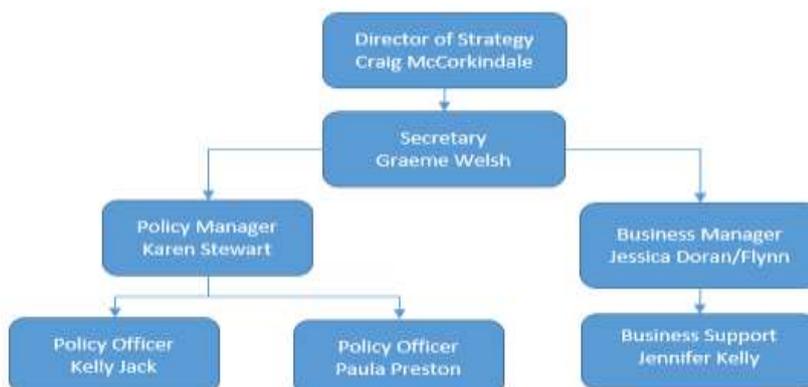
Support

The Scottish Courts and Tribunals Service (SCTS) has the statutory function of providing the property, services and staff for the Council, under section 62 of the Judiciary and Courts (Scotland) Act 2008. The following table indicates the level of that resourcing.

Budget 2021/22	
Payroll	£220,000
Supplies and Services	£54,000
TOTAL	£274,000

Policy Support

The Secretariat consists of seven posts: 1 Director of Strategy, 1 Secretary to the SCJC, 1 business manager, 1 policy manager, 2 policy officers and 1 business support officer.



Legal support

Legal support is provided by the Lord President’s Private Office (LPPO) which is staffed by lawyers on secondment from the Scottish Government Legal Directorate (SGLD).

Key achievements and ongoing work

Summary of rules prepared in 2021-22

This section summarises, by commencement date, the eight sets of draft rules which the Council was able to submit to the Court of Session for consideration during the 2021/22 reporting period:

- The [Act of Sederunt \(Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment\) \(Qualified One-Way Costs Shifting\) 2021](#) came in to force on **30 June 2021**. It amended the Rules of the Court of Session, the Sheriff Appeal Court Rules, the Ordinary Cause Rules and the Summary Cause Rules by adding new Chapters to support Qualified One Way Cost Shifting (QOCS). Those rules specify the further exceptions the council may make, in terms of section 8(6) of the 2018 Act, and establishes the court procedure for assessing whether those exceptions should apply. Those exceptions are that where the court makes an award of expenses on the ground that the pursuer has failed to beat a tender, or unreasonably delayed in accepting it, the liability of that person to the applicant, or applicants, lodging the tender is not to exceed expenses incurred by the applicant after the date of the tender, and is limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer
- The [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2021](#) came in to force on **30 June 2021**. As several years have passed since these fees were last amended, the table of fees for messengers at arms and sheriff officers were adjusted for a 6% uplift.
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment\) \(Insolvency\) 2021](#) came in to force on **20 September 2021**. The Act introduced moratoriums against insolvency (and other measures) to provide a breathing space for companies who may find themselves in difficulty because of the pandemic.

- [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2021:](#)
The Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2020 had made temporary modifications until 30 September 2021 that would require all simple procedure claims to be submitted using Civil Online or the internet interface to the Scottish Courts and Tribunals Service's case management system. With effect from **30 September 2021**, this subsequent Act of Sederunt extended the life of those temporary provisions for a further 6 month period expiring on 31st March 2022.
- The [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment\) \(Age of Criminal Responsibility \(Scotland\) Act 2019\) 2021](#) came in to force on **17 December 2021**. Following an increase in the age of Criminal Responsibility to 12; the rules provide for the Court, on application by the Police, to make civil orders for the search of a child, the interviewing of a child and the taking of prints and samples from a child between the ages of 8 and 12, where justified.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Miscellaneous\) \(No.2\) 2021](#) came in to force on **1 January 2022**. It inserted a new paragraph into rule 14.2 of the Rules of the Court of Session 1994 as a consequence of the establishment of the office of the Scottish Biometrics Commissioner. Those new rules provide that an application made under an enactment that is reporting a matter to the court due to obstruction, or for enforcement, is to be made by petition.
- [Act of Sederunt \(Sheriff Appeal Court Rules\) 2021](#) came in to force on **6 January 2022**. It consolidates and restates the Sheriff Appeal Court Rules 2015 in order to incorporate the amendments arising from the significant Rules Review exercise that had been undertaken by the Council.
- The [Act of Sederunt \(Simple Procedure Amendment\) \(Civil Online\) 2022](#) came into force on **31 March 2022**. It permanently amended the Act of Sederunt (Simple Procedure) 2016 so as to require all simple procedure claims to be submitted using Civil Online or the internet interface to the Scottish Courts and Tribunals Service's case management system. It makes permanent the temporary modifications introduced by the Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2020, and extended by the Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2021. It revokes both the 2020 and 2021 Acts of Sederunt in consequence of the temporary modifications being converted to a permanent a rule change.

Consultations undertaken

During this reporting period the Council took a decision to [consult](#) on draft rules covering the Mode of Attendance at court hearings.

That public consultation closed on 15 November 2021 with eighty two responses received. An analysis of the responses was subsequently [published online](#) on 15 February 2022, along with an accompanying business and regulatory impact assessment (BRIA) and an equality impact assessment (EQIA).

During the coming year the Council will assess how best to respond to that feedback.

Formal recommendations made

One of the statutory functions of the Council is to advise and make recommendations to the Lord President on the development of and changes to the civil justice system in Scotland. The 2013 Act provides the Council with the power to take such action as it considers necessary or desirable in pursuance of this function¹ and requires a summary of any recommendations made to be included in the Council's Annual Report².

During the reporting year 2021/2022, the Council made no formal recommendations under Section 3 (2) (f) of the 2013 Act.

¹ Section 3

² Section 5(3)

Annual Programme for 2022/2023

The current pipeline of rules requests

The pipeline of rules requests logged as at 31 March 2022 consists of 42 items:

Count	Item	Category	Description
1	F37 / F74	Rules Review	Pre Action Protocol - Personal injury
2	F73	Rules Review	Simple Procedure (Core Rules)
3	F69	Rules Review	Fatal Accident Inquiry Rules
4	F72	Rules Review	Withdrawal of Agents (RCS Chap. 30)
5	F77 / A1	Rules Review	Inner House Rules
6	D2	Rules Review	Protective Expenses Orders (PEO's)
1	F88	Fees Review	Law Society of Scotland
2	F86	Fees Review	Fee structure - for Clinical Negligence PAP
3	F87	Fees Review	Fee structure - for Disease PAP
1	-	Modernisation	Simple Procedure Special Claims (SPSC)
2	A2	Modernisation	The New Civil Procedure Rules / Digitisation
3	F15 / F65	Modernisation	Case Management – Sheriff Court Family Actions
4	F5	Modernisation	Lay representation, lay support and party litigants
5	F86	Modernisation	Pre Action Protocol - Clinical negligence
6	F87	Modernisation	Pre Action Protocol - Disease
1	B47	Bills	United Nations Convention on the Rights of the Child (Incorporation) (S) Bill
2	-	Bills	Coronavirus (Recovery and Reform) (Scotland) Bill
3	-	Bills	Fireworks and Pyrotechnic Articles (Scotland) Bill
4	-	Bills	Gender Recognition Reform (Scotland) Bill
1	A3	Acts	Tribunals (Scotland) Act 2014
2	B45	Acts	Abusive Behaviour and Sexual Harm (Scotland) Act 2016
3	B34.B	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018: - Sec 9 – Representation free of charge
4	B34.C	Acts	- Sec 10 – Third party funding
5	B34.D	Acts	- Sec 11 – Awards against legal representatives
6	B37	Acts	Damages (Investment Returns and Periodical Payments) (S) Act 2019
7	-	Acts	Civil Partnership (Scotland) Act 2020
8	B40	Acts	Children (Scotland) Act 2020
9	B43	Acts	UK Withdrawal from the European Union (Continuity) (S) Act 2021
10	C40	Acts	Telecommunications Infrastructure (Leasehold Property) Act 2021
11	-	Acts	Defamation and Malicious Publication (Scotland) Act 2021
12	B42	Acts	Domestic Abuse (Protection)(Scotland) 2021
13	-	Acts	The Payment and Electronic Money Institution Insolvency Regulations 2021
1	E15	Other Misc.	Judicial Rate of Interest
2	E10	Other Misc.	Public Interest Interventions
3	F62	Other Misc.	Appointment of assessors under the Equality Act
4	F3	Other Misc.	Extension of Simplified Divorce
5	-	Other Misc.	Historic Abuse – Nominal Defenders
6	-	Other Misc.	E-Motions
7	-	Other Misc.	Reporting Restriction Orders
8	F89	Other Misc.	Pursuers offers (for PI cases under £5k)
9	F90	Other Misc.	Lodging objections in a Diet of Taxation
1	F91	Consultation	Mode of Attendance at Hearings

The key priorities for 2022/23

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 business priorities for each yearly period beginning on 1 April, before the start of that period (“the programme”).

From the current pipeline of 42 rules requests, the 16 items that will have priority during the 2022-23 planning period are:

<i>Count</i>	<i>Item</i>	<i>Category</i>	<i>Description</i>
1	F73	Rules Review	Simple Procedure (Core Rules)
2	F77 / A1	Rules Review	Inner House Rules
3	-	Rules Review	Scoping of Tribunal Rules
4	-	Modernisation	Simple Procedure Special Claims (SPSC)
5	A2	Modernisation	The New Civil Procedure Rules / Digitisation
6	F15 / F65	Modernisation	Case Management – Sheriff Court Family Actions
7	F5	Modernisation	Lay representation, lay support and party litigants
8	F86	Modernisation	Pre Action Protocol - Clinical negligence
9	F87	Modernisation	Pre Action Protocol - Disease
10	B34.B	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018: - <i>Sec 9 – Representation free of charge</i>
11	B34.C	Acts	- <i>Sec 10 – Third party funding</i>
12	B34.D	Acts	- <i>Sec 11 – Awards against legal representatives</i>
13	E15	Other Misc.	Judicial Rate of Interest
14	F62	Other Misc.	Appointment of assessors under the Equality Act
15	F3	Other Misc.	Extension of Simplified Divorce
16	F91	Consultation	Mode of Attendance at Hearings

Further information and contacts

Full information about the Council and its activities is available at 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.

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:

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