



Scottish
Civil Justice
Council



Scottish Civil Justice Council

Annual Report 2022/2023 and Annual Programme 2023/2024

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Chair's Foreword

It is a pleasure to introduce the tenth Annual Report of the Scottish Civil Justice Council, covering the period from 1 April 2022 to 31 March 2023.

The Council and its committees continued to respond to rules requests in light of new legislation and policy initiatives. New rules, as well as amendments to existing rules, have been implemented over a broad spectrum of subject matters. The most significant of those were the introduction of Case Management in Sheriff Court Family Actions, and the review of the Core Simple Procedure rules. A total of seven sets of draft rules instruments prepared by the Council have been given legal effect by the Court of Session during this reporting period.



The Council continues to support the wider programme of civil court reform which included progressing two consultations; on the Attendance at Hearings Rules and the Inner House Rules. The finalised rules emerging from those consultations will be commenced over the next reporting period.

The New Civil Procedure Rules - Second Report was published by the council in August 2022. It sets out a Procedural Narrative as our vision for how a civil action could in future be progressed more efficiently, from the initiation of a new case through to the eventual resolution of the matters in dispute. That procedural narrative continues to shape the development of our draft rules for Ordinary Civil Procedure which will be put out for wider consultation in due course.

As always, I am grateful for the support of all Council and Committee members whose dedication is absolutely vital in ensuring that the Council's work is progressed effectively. I also want to thank the Council's Secretariat and 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
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 (*the 2013 Act*).

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 statutory guiding 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. 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 provided for in the 2013 Act are 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 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 Hon. Lord Ericht <i>(was Lord Boyd until May 2022)</i> The Hon. Lady Carmichael Sheriff Principal Ross <i>(was SP Murray until 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	Catherine Smith KC Fiona Drysdale <i>(was Lynda Brabender KC until October 2022)</i>
Solicitor members Appointed by the Lord President in consultation with the Council of the Law Society of Scotland	At least 2 practicing solicitors	Iain MacRae <i>(was Joel Conn until January 2023)</i> Nicola Irvine 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	Sheriff Jillian Martin-Brown <i>(was Judge d'Inverno until October 2022)</i>
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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 attended Council meetings during 2022-23:

Cameron Stewart	Director of Development and Innovation, Scottish Courts and Tribunals Service
Nicola Anderson	Legislation Implementation Team, Scottish Courts and Tribunals Service
Chris Fyffe	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); 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.

Table of meetings for 2022 - 2023

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

Support

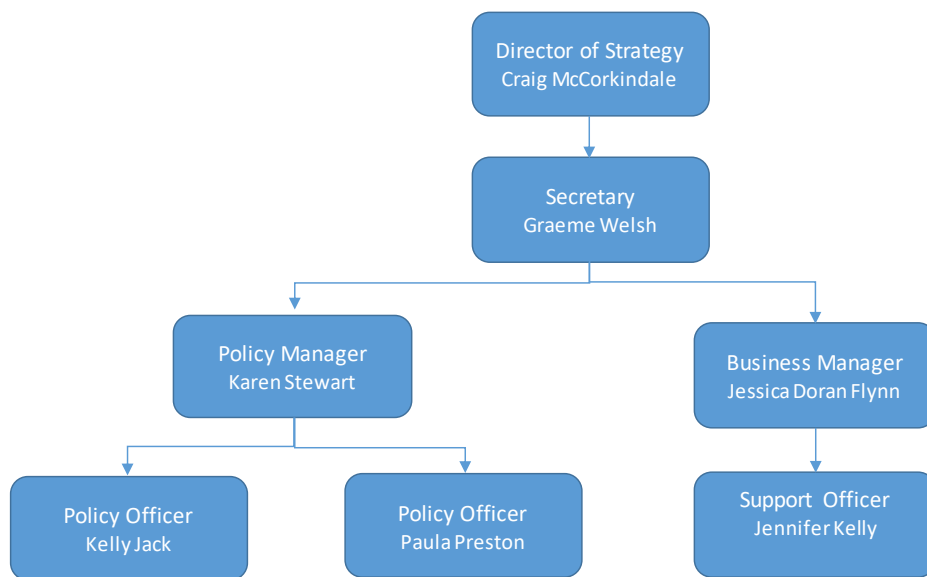
The Scottish Courts and Tribunals Service (SCTS) has the statutory function of providing the property, services and staff for the Council, under section 62 of the Judiciary and Courts (Scotland) Act 2008. The following table indicates the expected level of that resourcing.

Budget 2022/23	
Payroll	£430,435
Supplies and Services	£45,985
Office & Other Costs	£1,200
Travel & Subsistence	£1,000
TOTAL	£478,620

Policy Support

The Scottish Courts and Tribunals Service (SCTS) provides the secretariat support for the Council.

The Secretariat consists of seven posts: 1 Director of Strategy, 1 Secretary, 1 Business Manager, 1 Policy Manager, 2 Policy Officers and 1 Administrative Support Officer.



Legal support

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

Key achievements and ongoing work

Summary of new rules issued in 2022-23

This section summarises, by date made, the seven sets of rules instruments which the Council submitted to the Court of Session for consideration during this reporting period.

- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Appeal Court Rules Amendment\) \(Miscellaneous\) 2022](#) was made **19 April 2022** and came into force on 19 May 2022. The Economic Crime (Transparency and Enforcement) Act 2022 amended the Proceeds of Crime Act 2002. This Act of Sederunt made consequential amendments to the Scottish procedure for seeking unexplained wealth orders, which allows ‘applications for more time’ to be made by lodging a note in process.
- This was an initial [Act of Sederunt \(Simple Procedure Amendment\) \(Miscellaneous\) 2022](#) made **15 June 2022** with a coming into force date of 28 November 2022. This Act of Sederunt amended the Simple Procedure Rules 2016 as a result of the significant Rules Review exercise undertaken by the Council. Changes were made to the rules, forms and standard orders to deliver a number of operational efficiencies.
- The [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Recognition and Enforcement of Judgments\) 2022](#) was made on **20 September 2022** and came into force on 01 October 2022. This Act of Sederunt amended Chapter 62 (recognition, registration and enforcement of foreign judgments, etc.) of the Rules of the Court of Session to allow documents given to, or issued by, the Keeper of the Registers of Scotland to be signed and transmitted electronically.
- The [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#) was made on **28 September 2022** and will come into force on 25 September 2023. This Act of Sederunt amends Chapters 33 and 33A of the Ordinary Cause Rules 1993 in relation to defended Family actions and Civil Partnership actions in the sheriff court,

reflecting the outcome of a significant rules Review Exercise undertaken by the Council which introduces Initial Case Management Hearings and Full Case Management Hearings into family proceedings.

- This was an amending instrument. The [Act of Sederunt \(Simple Procedure Amendment\) \(Miscellaneous\) \(No. 2\) 2022](#), was made on **12 October 2022** and came into force on 11 November 2022. It implemented a request from the Scottish Courts and Tribunals Service to defer the commencement date previously provided for to accommodate required operational changes in the hosting arrangements for some key digital services. The Council agreed. The amended Simple Procedure Rules will now come into force on 31 May 2023.
- [The Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Civil Protection Measures \(EU Exit\)\) 2022](#) were made on **9 November 2022** and came into force on 01 December 2022. This Act of Sederunt amended the Rules of the Court of Session, the Ordinary Cause Rules and the Summary Application Rules, following the United Kingdom leaving the European Union on 31st December 2020, and in consequence of Part 1 and 2 of the Civil Protection Measures, European Protection Order and Victims' Rights (EU Exit) (Scotland) (Amendment Etc.) Regulations 2022. These rules a) revoked those parts of the EU Regulation that previously enabled persons covered under protection measures granted in Scottish courts to apply to have those measures to be applied and enforced in EU Member States and b) retained those parts of the EU Regulation concerned with the recognition and enforcement in Scotland of protection measures that had been granted in EU Member States.
- The [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment\) \(Sexual Harm Prevention Orders and Sexual Risk Orders\) 2023](#) were made on **1 March 2023** and came into force on 31 March 2023. This Act of Sederunt provides new rules for the handling of applications for the new Sexual Harm Prevention Orders and Sexual Risk Orders under the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#).

Other rules requests closed by letter or report

Judicial Rate of Interest

The Chair wrote to the Scottish Government in December 2022 setting out the Councils views on the approach taken to setting the Judicial Rate of Interest.

Fatal Accident Inquiry Rules

The Council considered an Evaluation Report on the FAI rules in February 2023. That report had concluded that users consider the FAI rules fit for purpose, and that a more detailed Rules Review exercise is not required. The secretariat will seek the views of the COPFS before deciding on whether to progress any rule changes.

Scoping Report for the Tribunal Rules

The Council considered a report in February 2023 on the anticipated timing for the transfer of the tribunals rule making function to the SCJC (*in 2026-27 at the earliest*). The Council will continue to monitor progress with the transfers of each tribunal jurisdiction, as the completion of all jurisdiction transfers is the trigger for transfer of this rule making function.

Consultations on proposed rule changes

During this reporting period the Council finalised a public consultation on Modes of Attendance Rules and a targeted consultation on the Inner House Rules.

Modes of Attendance

In the last reporting year the Council considered the eighty two responses received to this public consultation and published an Analysis of Responses report. During the current year the Council continued to develop the resultant new rules in response to that analysis. Those rules were approved in February 2023 and will be commenced later in 2023. To complete the consultation exercise; the Councils [Response to Consultation](#), [Business and Regulatory Impact Assessment](#), and [Equality Impact Assessment](#) were published in March 2023.

Inner House Rules

The Council conducted a targeted consultation between June and September 2022 to identify potential improvements to the operation of the Inner House. The [Analysis of Responses](#) report was published in January 2023, with the Councils [Response to Consultation](#) report then published in March 2023. The consequent amendments to the Inner House Rules will be submitted to Council for approval later in 2023.

Formal Recommendations Made

One of the statutory functions of the Council is to advise and make recommendations 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 such recommendations to be included in the Council's Annual Report².

During the reporting year 2022/23 the Council made no such formal recommendations under Section 3 (2) (f) of the 2013 Act.

¹ Section 3

² Section 5(3)

Annual Programme for 2023/2024

Under section 5 of the 2013 Act, the Council must prepare an annual plan that sets out its business priorities for each financial year, before the start of that period (“the programme”).

The current pipeline of rules requests

As at 1 April 2023, the total pipeline of rules requests formally logged for consideration by the Council consists of 42 items:

COURT RULES (35):

Count	Item	Category	Description
1	F37 / F74	Rules Review	Personal Injury Pre Action Protocol
2	F72	Rules Review	Withdrawal of Agents (RCS Chap. 30)
3	F77 / A1	Rules Review	Inner House Rules
4	D2	Rules Review	Protective Expenses Orders (PEO's)
1	A2	Modernisation	Rules Rewrite (the New Civil Procedure Rules)
2	-	Modernisation	Simple Procedure Special Claims (SPSC)
3	F5	Modernisation	Lay representation, lay support and party litigants
4	F86	Modernisation	Pre Action Protocol - Clinical negligence
5	F87	Modernisation	Pre Action Protocol - Disease
6	-	Modernisation	Mode of Attendance Rules
7	F93	Modernisation	Caveats
8	-	Modernisation	Intervenors (consolidated chapter)
9	-	Modernisation	Group Proceedings Part2 (<i>opt out procedure</i>)
1	E10	Other Request	Public Interest Interventions
2	F62	Other Request	Appointment of assessors under the Equality Act
3	F3	Other Request	Extension of Simplified Divorce
4	-	Other Request	Historic Abuse – Nominal Defenders
5	-	Other Request	E-Motions
6	-	Other Request	Reporting Restriction Orders
7	F89	Other Request	Pursuers offers (for PI cases under £5k)
8	F90	Other Request	Lodging objections in a Diet of Taxation
9	F94	Other Request	Inhibition in execution
10	F95	Other Request	Postal copies (<i>of documents served</i>)
1	B34.B	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 9
2	B34.C	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 10
3	B34.D	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 11
4	B37	Acts	Damages (Investment Returns and Periodical Payments) (S) Act 2019
5	-	Acts	Civil Partnership (Scotland) Act 2020
6	B40	Acts	Children (Scotland) Act 2020
7	B43	Acts	UK Withdrawal from the European Union (Continuity) (S) Act 2021
8	C40	Acts	Telecommunications Infrastructure (Leasehold Property) Act 2021
9	-	Acts	Defamation and Malicious Publication (Scotland) Act 2021
10	B42	Acts	Domestic Abuse (Protection)(Scotland) 2021
11	-	Acts	Payment & Electronic Money Institution Insolvency Reg's 2021
12	-	Acts	Coronavirus (Recovery and Reform) (Scotland) Act 2022

NEW FEES RULES (4):

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

NEW INQUIRY RULES (1):

Count	Item	Category	Description
1	-	Other Request	Evaluation Report (to seek an update on COPFS views)

NEW TRIBUNAL RULES (2):

Count	Item	Category	Description
1	-	Acts	Monitor the jurisdiction transfers (per the 2014 Act)
2		Modernisation	Tribunals Rules Rewrite (phase 1 - judicial objectives)

The key priorities for 2023-24

From that total opening balance of 42 rules requests, the Council has agreed 16 items as the priorities it wishes to see progressed during the 2023-24 planning period:

Count	Item	Category	Description
1	F77 / A1	Rules Review	Inner House Rules
2	D2	Rules Review	Protective Expenses Orders (PEO's)
3	A2	Modernisation	Rules Rewrite (the New Civil Procedure Rules)
4	-	Modernisation	Simple Procedure Special Claims (SPSC)
5	F5	Modernisation	Lay representation, lay support and party litigants
6	F86	Modernisation	Pre Action Protocol - Clinical negligence
7	F87	Modernisation	Pre Action Protocol - Disease
8		Modernisation	Mode of Attendance Rules
9	F93	Modernisation	Caveats
10	-	Modernisation	Interveners (consolidated chapter)
11	F62	Other Request	Appointment of assessors under the Equality Act
12	F3	Other Request	Extension of Simplified Divorce
13	B34.B	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 9
14	B34.C	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 10
15	B34.D	Acts	Civil Litigation (Expenses & Group Proceedings)(S) Act 2018 - Sec 11
16	B37	Acts	Damages (Investment Returns and Periodical Payments) (S) Act 2019

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.

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:

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