



SCJC Update – January 2016

SCJC Activity

Winter Tour

The SCJC's Winter Tour has concluded with nearly 80 people attending sessions held at the sheriff courts in Aberdeen, Inverness and Glasgow. The sessions were attended by solicitors, sheriff officers, in-court advisors and courts and tribunals staff. PowerPoint presentations, delivered by Council members and lawyers from the Rules Rewrite Drafting Team, provided information on the role of the SCJC; courts reform; drafting rules of court and upcoming changes.

Secondary Legislation, research and consultations

At the Council meeting on 16 November 2015, Council members considered draft rules in the following areas and agreed that they be submitted to the Court of Session for consideration:

- Protective Expenses Orders – to revise the rules in relation to orders regulating the liability for expenses in proceedings contained in Chapter 58A of the Rules of the Court of Session to take account of developments since the rules were introduced and to ensure compliance with relevant Directives;
- Enterprise Act 2002 – to make provision for an expanded category of cases to be subject to transfer from the Court of Session and the sheriff court to the Competition Appeal Tribunal;
- Criminal Procedure (Scotland) Act 1995 – to insert provision into the Child Care and Maintenance Rules for appeals to the sheriff against a local authority's decision to place a child in secure accommodation.



Ongoing work

- Research – the SCJC is jointly funding a Scottish Legal Aid Board research proposal on Alternative Dispute Resolution;
- Protective Expenses Orders – Lord Malcolm has agreed to consider the test and procedure regulating applications under Chapter 58A, to include the interaction between PEOs and legal aid.

Committee Activity

The [Access to Justice Committee](#) last met on 02 November 2015. During this year the main focus of the Committee has been the development of the rules of court for the new simple procedure to replace the small claims and summary cause procedures in the sheriff court. A consultation paper on the draft Simple Procedure Rules was issued on 25 November 2015 and closes on 04 March 2016. Further details of the consultation can be found in the “Consultation” section of this Update. During the consultation period the Committee will be considering lay representation and lay support, and will be looking at alternative dispute resolution in the longer term.

The [Costs and Funding Committee](#) last met on 16 November 2015. It continues to work on the implementation of the recommendations of Sheriff Principal Taylor’s Review of Expenses and Funding of Civil Litigation in Scotland. The SCJC now has powers to regulate fees within the Court of Session, sheriff court and Sheriff Appeal Court and the Costs and Funding Committee has been supporting this by exploring options and methodologies for assessing and/or reviewing fee provisions. In connection with this the Committee has recently held discussions with nominated members of the Law Society’s Remuneration Committee and nominated members of the Society of the Messenger-at-Arms and sheriff officers.



The [Family Law Committee](#) last met on 07 December 2015. It recently issued a Family Law Case Management questionnaire to sheriffs with a closing date of 18 December 2015. It will consider a Report of the findings at its 22 February 2016 meeting. The Committee is also considering issues raised in relation to hearing the voice of the child in family actions and, as a first step, is looking at developing a more child friendly form for seeking the views of the child, with other work being taken forward at a later stage.

The [ICT Committee](#) last met on 26 October 2015. It is tasked with looking at how ICT can be used more effectively within the Scottish civil courts. To inform these considerations the Committee undertook a series of visits to explore the development and use being made of three IT systems in the justice sector in the UK. At its last meeting the Committee received a demonstration of an early prototype of the new civil case management system which is being developed by the Scottish Courts and Tribunal Service. The Committee will be considering some of the proposals in the Civil Justice Council report “Online dispute resolution for low-value claims” at its next meeting.

The [Personal Injury Committee](#) last met on 09 November 2015. It is currently focused on the development of a compulsory general personal injury pre-action protocol along with relevant rules to support it. It is also looking at personal injury simple procedure, for implementation along with the new simple procedure rules. The Committee will consider draft rules for each of these matters at its 01 February 2016 meeting.

The [Rules Rewrite Committee](#) last met on 24 November 2015 and continues to progress with implementation of courts reform. The Committee is currently working on implementation of the remaining areas of the Courts Reform (Scotland) Act 2014 including vexatious proceedings, interdicts, the granting of leave or permission to appeal to the Inner House, and other orders. It will also begin to consider the structural review for the Rules Rewrite Project. As part of that process, it is planned to carry out an assessment of the instruction process for rules made to date.



Recent Rules

[Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and the Sheriff Court Rules Amendment\) \(Sheriff Appeal Court\) 2015](#)

This instrument was made on 08 December 2015. Paragraph 19 comes into force on 31 December 2015 and the remaining provisions come into force on 01 January 2016. It amends a number of existing rules so that their appeal provisions now point appellants to the Sheriff Appeal Court Rules, as well as making a number of other technical changes.

[Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(No. 4\) \(Protective Expenses Orders\) 2015](#)

This instrument was made on 02 December 2015 and comes into force on 11 January 2016. It amends Chapter 58A of the Rules of the Court of Session in relation to the granting of protective expenses orders in certain proceedings in which such an order can be granted.

[Act of Sederunt \(Fees of Solicitors in the Sheriff Appeal Court\) 2015](#)

This instrument was made on 17 November 2015 and comes into force on 01 January 2016. It regulates the taxation of expenses between parties in relation to civil proceedings in the Sheriff Appeal Court.

[Act of Sederunt \(Sheriff Appeal Court Rules\) 2015](#)

This instrument was made on 21 October 2015 and comes into force on 01 January 2016. It makes provision about procedure to be followed in appeals to the Sheriff Appeal Court in civil proceedings.



[Act of Sederunt \(Child Support Rules Amendment\) \(Miscellaneous\) 2015](#)

This instrument was made on 16 October 2015 and comes into force on 21 December 2015. It inserts a new Schedule in the Child Support Rules, setting out forms in connection with applications to the sheriff under the Child Support Act 1991.

Publications and other developments of interest

[Consultation on draft Simple Procedure Rules](#)

A consultation paper seeking views on the draft rules for simple procedure was published on November 2015. The consultation closes on Wednesday, 4 March 2016 and the consultation responses will be published on the SCJC website. Implementation of simple procedure is planned for the end of November 2016.

This is the first SCJC Update. It has been created by the SCJC secretariat to provide stakeholders with regular information on the work of the SCJC and its committees. It is intended that subsequent updates will be produced every two months. Meeting dates and latest minutes of the SCJC and its committees are available on the [SCJC website](#).