



## Scottish Civil Justice Council Update – Issue 10: June 2017

### Council Activity – 29 May meeting

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#### Annual Report 2016/17 and Annual Programme 2017/18

The Council considered and approved its [Annual Report for 2016/17 and Annual Programme for 2017/18](#). This is the Council's fourth Annual Report outlining its achievements, accounts and a summary of the rules prepared during the year. This year the Council has combined the Annual Report with the Annual Programme, which details how it will deliver on its priorities for 2017/18.

#### Committee membership

The Council approved the following appointments:

- ICT Committee – Claire Taylor and Lauren Bruce for a period of three years

Members also approved a number of changes to the arrangements for SCTS observers.

#### Ongoing work

- Simple Procedure (Special Claims) Rules – the Council considered and approved in principle revised draft rules, subject to an amendment to make it clear that a respondent does not have to complete an Eviction Response Form. The previous planning assumption had been that the special claims rules would come into force in September 2017. However, given that the planned commencement of Section 16 of the Housing (Scotland) Act 2014 (which transfers the functions and jurisdiction of the sheriff, in relation to certain private rented housing actions, to the First-tier Tribunal) is anticipated towards the end of the year, the Making Justice Work Programme Board considered that an implementation date of mid-April 2018 would be more appropriate; that would allow for the ICMS Portal to be available for at least three months prior to that date. The Council agreed that a mid-April commencement for the special claims rules would be prudent.



- Review of Fees in the Scottish Civil Courts: consultation proposals – the Council approved the draft review programme and general draft consultation proposals developed by its Costs and Funding Committee in relation to the methodology to be adopted for reviewing fees in the civil courts. In particular, it was agreed that the first consultation tranche focus on fees of solicitors.
- Hearing the Voice of the Child: form redesign proposals – the Council approved a funding request from its Family Law Committee to commission a graphic designer to redesign the forms for hearing the voice of the child in family actions.

## Secondary Legislation

This section provides an update on draft rules of court that have been considered by the Council and have been submitted to the Court of Session for consideration. The [Recent Rules](#) section below details rules that have subsequently been approved by the Court of Session and embodied in an Act of Sederunt:

- Case management in family actions – the Council considered and approved draft rules developed by the Family Law Committee amending Chapter 49 of the Rules of the Court of Session by making provision for case management hearings and pre-proof hearings in family actions. The rules give effect to practice that currently operates under a voluntary protocol.

## Recent Rules

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### [Act of Sederunt \(Summary Application Rules 1999 Amendment\) \(Trafficking and Exploitation Orders\) 2017](#)

This instrument was made on 16 June 2017. Paragraph 1(2) and (3) sets out the coming into force dates. It amends the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 in consequence of the Human Trafficking and Exploitation (Scotland) Act 2015.



### **[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Regulation \(EU\) 2015/848\) 2017](#)**

This instrument was made on 14 June 2017 and comes into force on 26 June 2017. It amends the Sheriff Court Bankruptcy Rules 2016, the Rules of the Court of Session 1994, the Judicial Factors Rules 1992 and the Sheriff Court Company Insolvency Rules 1986 to replace references to Regulation (EC) 1346/2000 of 29th May 2000 on insolvency proceedings, which has been repealed and replaced, by references to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20th May 2015 on insolvency proceedings.

### **[Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Withdrawal of Agents and Judicial Review\) 2017](#)**

This instrument was made on 13 June 2017 and comes into force on 17 July 2017. It amends Chapter 30 (withdrawal of agents) of the Rules of the Court of Session to place additional requirements on agents who withdraw from acting and to allow the Court, on its own initiative, to ordain the party whose agent has withdrawn from acting to intimate whether they intend to proceed. It also amends Chapter 58 (judicial review) of the Rules to make various changes to the procedure. This follows from the Council's review of how the rules have been operating since they came into force in 2015.

### **[Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment\) \(Lay Representation\) 2017](#)**

This instrument was made on 1 June 2017 and comes into force on 3 July 2017. The Rules amend the Rules of the Court of Session, the Sheriff Appeal Court Rules, the Ordinary Cause Rules, the Summary Application Rules and the Summary Cause Rules to extend the role of lay representatives.



### **[Act of Sederunt \(Sheriff Court Rules Amendment\) \(European Small Claims Procedure and European Order for Payment Procedure\) 2017](#)**

This instrument was made on 30 May 2017 and comes into force on 14 July 2017. It amends the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 and the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 to take account of amendments made by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 to Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and to Regulation (EC) No 1896/2006 creating a European order for payment procedure.

### **[Act of Sederunt \(Sheriff Court Rules Amendment\) \(Miscellaneous\) 2017](#)**

This instrument was made on 12 May 2017 and came into force on 15 June 2017. It makes miscellaneous amendments to the Simple Procedure Rules and the Fatal Accident Inquiry Rules.

### **[Act of Sederunt \(Fees of Sheriff Officers\) \(Amendment\) 2017](#)**

This instrument was made on 12 May 2017 and came into force on 15 June 2017. It amended the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 to extend its application to simple procedure cases and appeals in the Sheriff Appeal Court.

### **[Act of Sederunt \(Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment\) \(Competition Proceedings\) 2017](#)**

This instrument was made on 26 April 2017 and came into force on 26 May 2017. It implemented EU Damages Directive 2014/104 on competition law. The Directive is designed to make it easier for individuals to bring claims for breaches of competition law.



### [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Vexatious Actions\) 2017](#)

This instrument was made on 26 April 2017 and came into force on 26 May 2017. The rules set out the procedure which will apply when a person who is subject to an order under the Vexatious Actions (Scotland) Act 1898, seeks leave to institute legal proceedings.

### [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Curators ad litem\) 2017](#)

This instrument was made on 26 April 2017 and came into force on 26 May 2017. The instrument made changes to the rules that apply to the appointment of curators ad litem to defenders in family actions.

## Committee Activity

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The [Access to Justice Committee](#) last met on 12 June 2017. At its meeting, the Committee further considered its review into lay representation and lay support in the Scottish courts and in particular, considered the issue of remuneration and expenses for lay representatives. In addition, a representative from the Law Society of Scotland delivered a short presentation on the issue of regulating lay representatives and those without legal qualifications. The Committee continues to work towards making recommendations to the Council by the end of 2017.

The Committee is also considering proposals for changes to the current rules on Public Interest Interventions. A paper exploring these issues in depth will be considered at the next appropriate meeting.

Finally, the Committee is to consider a paper produced by Council member Brandon Malone in relation to improving Scotland's offering as a seat of commercial dispute resolution. Mr Malone's proposals will be considered by the Committee at the next appropriate meeting.





The [Costs and Funding Committee](#) last met on 23 May 2017. The Committee further considered draft rules and forms in connection with applications under section 19 of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Scottish Legal Aid Fund). A final version will be considered by the Committee in due course in advance of being submitted to the Council for approval.

Work is progressing in relation to combining the implementation of the Taylor recommendations in the sheriff court with a wider rationalisation of the rules regulating expenses that fall to be allowed on taxation of an account of expenses and associated applications to the court. The Committee's working group is continuing to develop the draft rules and consider the associated tables.

The [Family Law Committee](#) last met on 08 May 2017 and is currently giving consideration to the following matters:

*Hearing the voice of the child in family actions*

The Committee continues to consider all the issues raised in relation to the hearing of the voice of the child. In the first quarter of 2017 a number of organisations who work with children tested new draft forms prepared by the Committee for the purpose of seeking the views of the child in court proceedings. Feedback provided by the children and the organisations was considered by a subgroup of the Committee and the draft forms were revised accordingly. The Committee approved the revised draft forms and agreed to seek the Council's approval to instruct a graphic designer to make them more child-friendly and visually appealing. The Council approved the request on 29 May 2017. Draft rules are being prepared to support the introduction of the new forms.

*Case management in family actions*

The commissioned research on case management in family actions has concluded and the final [research report](#) by Dr Richard Whitecross and Dr Claire Lindsay has been received and considered. The Committee agreed to set up a subcommittee to take forward the recommendations made in the report, alongside proposals about case management made in a [policy paper](#) by the Scottish Government. The subcommittee will meet over the summer and report back to the Committee when it next meets on 23 October 2017.



The [ICT Committee](#) last met on 06 February 2017. It considered a discussion paper about ICT in the courts which was prepared by the Rules Rewrite Drafting Team as part of the Rules Rewrite Project. The Committee agreed a number of points of principle regarding the use of ICT in the civil courts.

The Committee also approved a summary of its recommendations about online dispute resolution and the online court, which was considered by the Council at its meeting on 20 March 2017.

The [Personal Injury Committee](#) has not met since the publication of the last Update. The Committee continues to take forward work on the compulsory clinical negligence and disease pre-action protocols. An update on the work, being taken forward by two sub-groups, will be provided at the Committee's next meeting in November 2017.

The [Rules Rewrite Committee](#) last met on 21 February 2017. Work is ongoing in relation to the following matters:

#### *Rules Rewrite Project*

The Rules Rewrite Drafting Team and the secretariat are finalising dates and practical arrangements for the Summer Tour which will publicise *The New Civil Procedure Rules – First Report* and introduce phase two of the Rules Rewrite Project Plan. In addition, proposals are being prepared about the work streams and working groups needed to take forward phase two of the plan and for related membership appointments. The Council will be invited to consider these in due course.

#### *Review of Judicial Review proceedings*

The Committee concluded its review of the judicial review rules and a draft instrument recommending rules changes was submitted to the Council and considered at its meeting on 29 May 2017. The Council approved changes to the Rules of the Court of Session, Chapter 58 (judicial review) and Chapter 30 (withdrawal of agents). The proposed changes to the procedure in Chapter 30 arose during the course of the rules review. The rules were made on 13 June and are due to commence on 17 July 2017.



### *Review of Sheriff Appeal Court Rules*

The Secretariat and Rules Rewrite Drafting Team are working on the preparation of an options paper to inform the review of the Sheriff Appeal Court Rules. The last planning meeting was held on 8 June 2017 and it is anticipated that a paper will be submitted to the committee for consideration in the summer.

## Consultations and other developments of interest

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### [Consultation on draft rules for Protective Expenses Orders](#)

This consultation was launched on 28 March 2017 and closed on 23 June 2017. The consultation sought views on draft rules proposing a new procedural model for applications for protective expenses orders. The consultation responses will be analysed in due course.





## Feedback

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

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This update is produced approximately every two months by the Scottish Civil Justice Council secretariat to provide stakeholders with regular information on the work of the Council and its committees. Meeting dates and latest minutes of the Council and its Committees are available on the [Council's website](#).