



## Scottish Civil Justice Council Update – Issue 11: September 2017

### Council Activity

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#### Committee membership

The Council approved the appointment of Walter Drummond-Murray to the Rules Rewrite Committee with effect from 18 July 2017.

#### Rules Rewrite Project

The First Report, “The New Civil Procedure Rules”, summarises the Council’s recommendations arising from the various discussion papers considered at Stage 1 of the Rules Rewrite Project Plan.

The Council has now established working groups to take forward workstreams 1 to 4 under Stage 2 of the project plan as described in the Report. Details of the working group remits and membership appointments can be found [here](#).

#### Ongoing work

- Simple Procedure (Special Claims) Rules – the Making Justice Work Programme Board, responsible for coordinating the implementation of civil court reform, has agreed that the timeframe for the introduction of the Special Claims Rules should be moved by at least six months to Autumn 2018 to ensure a smooth transition and to meet the needs of court users



## Recent Rules

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### [Act of Sederunt \(Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment\) \(Miscellaneous\) 2017](#)

This instrument was made on 11 July 2017 and comes into force on 18 September 2017. It amends Chapter 49 (Family Actions) of the Rules of the Court of Session 1994 by inserting new rules 49.32A and 49.32B, which make provision for a case management hearing and a pre-proof hearing respectively.

It also amends the Summary Application Rules 1999 to make provision for interim trafficking and exploitation prevention orders and interim trafficking and exploitation risk orders.

## Committee Activity

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The [Access to Justice Committee](#) last met on 28 August 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 how rules of court should regulate lay representatives and lay supporters. 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 and a paper exploring these issues in depth will be further considered at the next appropriate meeting.

Finally, the Committee considered 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 further considered by the Committee at its next meeting with a view to making recommendations to the Council by the end of 2017.



The [Costs and Funding Committee](#) has not met since publication of the last Update.

Work continues to progress 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 considered the structure of the proposed charging unit, the terms of a rule of general application for copying and scanning charges, continues to develop the draft rules and consider the associated tables of detailed charges.

The [Family Law Committee](#) has not met since publication of the last Update. Work is progressing in relation 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. As noted previously, 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*

Following consideration of the final [research report](#) by Dr Richard Whitecross and Dr Claire Lindsay, the Committee has established 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 continue to meet over the summer and report back to the Committee when it next meets on 23 October 2017.



The [ICT Committee](#) last met on 6 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.

A summary of the Committee's recommendations about online dispute resolution and the online court was considered by the Council at its meeting on 20 March 2017.

The Council has remitted work stream 2 of the Rules Rewrite Project to the Committee. Work stream 2, 'Applications and motions', concerns motions and minutes, interlocutors, transfer and remit of actions, the involvement of third parties (including sist and transference, third party notice, etc), and the recovery of evidence. The Committee will function as a working group to look at the topics within this area and in doing so, it will look at the overall policy considerations, not just from an IT perspective.

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 this 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 (RRDT) and members of the Council have conducted Summer Tour events across the country to publicise *The New Civil Procedure Rules – First Report* and to introduce Stage 2 of the Rules Rewrite Project Plan (RRPP). In addition, working groups have been established to take forward Stage 2 of the RRPP and membership appointments have been made. The RRDT and Secretariat are now finalising dates for the first tranche of working group meetings.

#### *Review of Sheriff Appeal Court Rules*

The Secretariat and the RRDT are working on the preparation of an options paper to inform the review of the Sheriff Appeal Court Rules. A number of planning



meetings have been held and it is anticipated that a paper will be submitted to the Committee for consideration in due course.

## 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. Fifteen responses were received. A consultant has been appointed to analyse the consultation responses and identify emerging issues that require further consideration.



## 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:

**Email:** [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

**Telephone:** 0131 240 6781

**Post:** Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

[SCJC website](#)

[@ScottishCJC](#)