



Scottish Civil Justice Council Update – Issue 16: July 2018

Council Activity

Committee membership

Yvonne MacDermid has been appointed to the Costs and Funding Committee for a further period of three years from 06 July 2018.

Fiona Campbell has been appointed to the Family Law Committee for a period of three years from 31 May 2018.

Nicola Anderson has been appointed as the SCTS Legislation and Implementation Team representative on the Costs and Funding, Information and Communications Technology and Rules Rewrite Committees from 14 May 2018.

Ongoing work

- The Council has considered and approved draft rules amending the core Simple Procedure Rules. In particular, the new rules amend the Simple Procedure Rules by providing for a 'Time to Pay Application' as a form of response. The instrument also sets out a new procedure to recall a decision and makes other minor amendments
- The Council has noted an update of the work being undertaken by the Lord President's Private Office in relation to Brexit. A scoping exercise was being undertaken by LPPO to assess the implications on rules of court and the Council has noted the scoping report presenting the findings of the exercise.
- Working groups in relation to Work streams 1, 2, 3, 4 and 5 of the Rules Rewrite Project are now established and holding regular meetings.

Committee Activity

The [Access to Justice Committee](#), has not met since the publication of the last *Update*.



The [Costs and Funding Committee](#) last met on 28 May 2018 and considered the following matters:

Proposals for rules: Review of Solicitors Fees

The Committee approved draft rules recommending an increase to the underlying hourly rate to fees of solicitors' for submission to the Council..

Justice System reform: Amendment of Taxation Procedure

The Committee considered whether rules regulating the procedure in relation to Ordinary Cause and Sheriff Appeal Court taxations should be brought in line with Court of Session procedure. The Committee agreed to support the proposals and instructed the Lord President's Private Office to prepare a draft Act of Sederunt for consideration at a future meeting.

Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

The Committee was invited to consider its policy for rules of court consequential on Parts 1 and 2 of the Bill. The Committee considered that the existence of a success fee agreement should not be added to the list of factors that the court requires to take into account when considering an application for an additional fee.

The Committee was content for an initial draft of rules relating to Qualified One-Way Costs Shifting to be prepared for consideration on the basis of the policy recommendations from the Personal Injury Committee.

The Committee considered section 11 of the Bill (awards of expenses against legal representatives) and agreed that rules should be drafted to limit the power conferred to a power to award expenses in so far as occasioned by the breach of duty and should guarantee the representative a right to appear and be represented in relation to any motion for expenses. The Committee did not consider it appropriate to rule out the possibility of an award of expenses in favour of the representative's own client or necessary to make provision in rules regarding conflicts of interest. The Committee agreed that draft rules of court should be prepared and considered at the next appropriate meeting.



The [Family Law Committee](#) last met on 30 April and considered the following matters:

Hearing the voice of the child in family actions

The Committee considered a revised draft instrument inserting into the rules the new forms that will replace Forms F9, CP7 and 49.8-N and making some ancillary changes to the rules relating to hearing the voice of the child in family action. Members agreed that rule 33.34(2) should be amended and suggested various minor amendments to the Form F9 and to the draft guidance. The Committee also agreed that, subject to these minor amendments, they were content for the draft instrument to be expanded to include provision about Chapter 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session, and that the expanded instrument would be prepared for consideration at the next appropriate meeting.

Personal Examination of Child and Other Vulnerable Witnesses in Children's Referral Proof and Appeal Proceedings

The Committee considered an updated joint policy paper by the Scottish Government and the Scottish Children's Reporter Administration ("SCRA") requesting that rules be made to prohibit the personal examination of a child or other vulnerable witness by a party in court proceedings under the Children's Hearings (Scotland) Act 2011, having previously agreed in principle that amendment of the rules is required. Members invited the Scottish Government and SCRA to submit a paper outlining detailed proposals for rules and agreed to consider a revised policy paper at the next suitable meeting.

Case Management of Family and Civil Partnership Actions

The Committee considered a draft consultation document on the case management of family and civil partnership actions in the sheriff court. The consultation is based on recommendations made by the Committee's sub-committee on case management aimed at improving how family and civil partnership actions are dealt with in the sheriff court, particularly in order to prevent undue delay in proceedings relating to the welfare of children. The Committee agreed to submit the consultation document to the Council for approval and agreed the timescale for the consultation.

The [Information and Communications Technology Committee](#) has not met since the publication of the last *Update*. It continues to meet as a working group to consider proposals under work stream 2 of the Rules Rewrite Project.

The [Personal Injury Committee](#) has not met since the publication of the last *Update*.



The [Rules Rewrite Committee](#) has not met since the publication of the last *Update*.

Recent Rules

[Act of Sederunt \(Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court\) \(Amendment\) 2018](#)

This instrument amends the fees that are prescribed in the tables of solicitors' fees, which regulate the fees that can be recovered under an award of expenses in respect of work carried out by a party's solicitor in civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court.

[Act of Sederunt \(Simple Procedure Amendment\) \(Miscellaneous\) 2018](#)

This instrument, which was made on 12 June April 2018 and comes into force on 30 July 2018, amends the procedure to be followed in simple procedure cases by providing for a 'Time to Pay Application' as a form of response. The instrument also sets out a new procedure to recall a decision and makes other minor amendments.

Consultations, publications and other developments of interest

[Consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court](#)

The Council has launched a public consultation on the case management of family and civil partnership actions in the sheriff court. The consultation will run until 22 August 2018.



Feedback

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

Telephone 0131 240 6781

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[SCJC website](#)

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