



SCJC Update – February 2016

SCJC Activity

Strategy meeting

The Council will meet on 14 March 2016 to discuss the work priorities for the Council and its committees. The output from the meeting will inform the Council's Annual Programme for 2016/17.

Secondary Legislation, research and consultations

At the Council meeting on 25 January 2016, Council members agreed to consider draft rules by correspondence in the following areas with a view that they be submitted to the Court of Session for consideration before the next meeting:

- Postal Administration Rules (Scotland) 2016 – to make provision to ensure that the universal postal service is maintained in the event that a company providing such a service becomes insolvent. **Following discussions, these provisions are now not due to come into force until October 2016 and accordingly draft rules will be considered at the next appropriate Council meeting.**

Ongoing work

- Research – the SCJC is jointly funding a Scottish Legal Aid Board research proposal on Alternative Dispute Resolution
- Protective Expenses Orders – Lord Malcolm is considering 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 01 February 2015. The Committee agreed to begin reviewing lay representation and lay support by considering the current guidance available. It also provided feedback on the Personal Injury Committee's proposal that compulsory Personal Injury Pre-Action Protocols should apply to party litigants. The Committee is currently consulting on the draft Simple Procedure Rules, to replace the small claims and summary cause procedures in the sheriff court. The consultation period closes on 02 March 2016.

The [Costs and Funding Committee](#) last met on 18 January 2016. 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. It also continues to explore options and methodologies for assessing and/or reviewing fee provisions. At its meeting on 25 January 2016, the Council approved the appointment of Stewart Mullan to the Committee.

The [Family Law Committee](#) last met on 18 January 2016 to specifically discuss a proposed remit and the future work of the Committee. A proposed remit was agreed, subject to the approval of the Council. At its 22 February 2016 meeting the Committee will consider a Report of the findings from responses to the Family Law Case Management questionnaire to sheriffs and decide the next steps in progressing this work. In relation to hearing the voice of the child in family actions, the Committee will also consider at that meeting the responses received to a letter informing relevant organisations that the Committee is reviewing Form F9 and inviting their views on how the form could be improved. The Committee will decide how it wishes to take forward work on the revision of Form F9.

The [ICT Committee](#) last met on 26 October 2015. At that 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. At its next meeting on 21 March 2016, the Committee will be considering some of the proposals in the Civil Justice Council report "Online dispute resolution for low-value claims", together with proposals about online courts in the Interim Report of the Civil Courts Structure Review in England and Wales.



The [Personal Injury Committee](#) last met on 01 February 2016. It considered a draft Act of Sederunt and agreed the general approach to be adopted in the draft rules of court and the compulsory general personal injury pre-action protocol. The Committee will invite comments from the Costs and Funding Committee on fees recoverable for work undertaken during the compulsory pre-action protocol stage and has asked the Access to Justice Committee to consider the application of the protocol to party litigants. The Committee is also looking at personal injury simple procedure, for implementation along with the new simple procedure rules and is developing a clinical negligence pre-action protocol. The Committee will consider draft rules for each of these matters at its 25 April 2016 meeting.

The [Rules Rewrite Committee](#) last met on 19 January 2016 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. The Committee has agreed a plan for managing the programme of work for the Rules Rewrite Project. Other work shortly to begin includes drafting rules to support the Bankruptcy Consolidation Bill and the recently enacted Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act.

Recent Rules

[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2016](#)

This instrument was made on 15 February 2016 and comes into force on 21 March 2016. It amends the Rules of the Court of Session and the Ordinary Cause Rules in relation to the following areas:

- Child Welfare Reporters: Civil Partnership Actions – to make provision for the appointment of Child Welfare reporters in civil partnership actions



- Rules of the Court of Session in Inner House Cases – to make provision for the reduction in the number of documents to be lodged with the court and provided to every other party and remove interlocutors refusing a sist from the list of interlocutors that may be reclaimed against without leave
- Signing docquets in appeals – to amend the Rules of the Court of Session to allow unrepresented applicants to sign Form 41A.2 (form of application to appeal to the Supreme Court) and Form 40.2 (form of application for leave to appeal)
- Summary Application Rules – to make corrective amendments to the Summary Application Rules which were flagged in relation to the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No.3) (Miscellaneous) 2015.

[Act of Sederunt \(Fees of Sheriff Officers\) 2016](#)

[Act of Sederunt \(Fees of Messengers-at-Arms\) 2016](#)

These instruments were made on 12 February 2016 and come into force on 01 April 2016. They make provision for an uplift in fees payable to Sheriff Officers and Messengers-at-Arms.

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

This instrument was made on 11 December 2015 and came into force on 01 February 2016. It amends the Ordinary Cause Rules 1993 in implementation of the Enterprise Act 2002 Regulations 2015 to allow for the transfer of certain cases to the Competition Appeal Tribunal for the sheriff court. It also amends the Act of Sederunt (Child Care and Maintenance Rules) 1997 in consequence of the coming into force of Section 44A of the Criminal Procedure (Scotland) Act 1995 and the Secure Accommodation (Scotland) Amendment (No 2) Regulations 2015.



Publications and other developments of interest

Recruitment

The tenure periods for inaugural Council members are due to expire in May 2016. A recruitment exercise will be undertaken to seek to appoint a solicitor member, two consumer representative members and two Lord President members (suitable individuals who may be appointed at the Lord President's discretion). Further details will be available on the Council's website shortly.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

Section 36 of the 2016 Act provides an enabling power to the Court of Session regarding practice, procedure and incidental/ ancillary matters pertaining to inquiries under the Act. Schedule 1 amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to confer responsibility upon the Council for the review of practice and procedure followed in inquiry proceedings under the 2016 Act and this includes the drafting of inquiry procedure rules. These provisions came into force on 15 January 2016. The Council will soon consider how this new policy area will be taken forward in order to facilitate implementation of the Act.

[Consultation on draft Simple Procedure Rules](#)

The consultation period on the draft rules of court for simple procedure is open until Wednesday 2 March 2016.



Feedback

The Council welcomes all 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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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 SCJC and its committees. Meeting dates and latest minutes of the SCJC and its committees are available on the [SCJC website](#).