



Scottish Civil Justice Council Update – May 2016

Council Activity

Strategy meeting

The Council met on 14 March 2016 to discuss work priorities for the Council and its committees. It is intended that drafting priorities for 2016/17 will be agreed at the next meeting on 16 May 2016. These will be incorporated into the Annual Programme which will be produced thereafter.

Ongoing work

- Research – the Council is jointly funding a Scottish Legal Aid Board research project to provide evidence about the drivers and motivations behind the dispute resolution paths chosen by people in dispute and to explore which type of case may be amenable to Alternative Dispute Resolution . The field work for the project has been completed and the report is being finalised for publication.
- Protective Expenses Orders – Lord Malcolm is considering the test and procedure regulating applications under Chapter 58A.

Committee Activity

- The [Access to Justice Committee](#) last met on 19 April 2016. The Committee considered the draft Simple Procedure Rules which had been revised in the light of the 42 responses to the *Consultation on the draft Simple Procedure Rules*, which closed on 2 March 2016. The Committee was advised that a number of consultation responses requested consultation on the special claims rules and that a split commencement date had been discussed and approved by the Making Justice Work Programme Board.



The Committee agreed to submit the draft rules to the Council's 16 May 2016 meeting, subject to minor amendments. The Simple Procedure will replace the small claims and summary cause procedures. The Simple Procedure Rules are expected to come into force in two stages, commencing in November 2016. The Committee are also considering guidance on lay representation and lay support.

The [Costs and Funding Committee](#) last met on 21 March 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. The working group is now collating the information received regarding exploring options and methodologies for assessing and/or reviewing fee provisions. The Committee agreed on a broad basis to commence its work on drafting proposals for Pursuer's Offers. At the last meeting, the Committee considered papers prepared by the Personal Injury Committee regarding Pre-action Protocols. The Committee intends to make further recommendations to the Personal Injury Committee for their consideration.

The [Family Law Committee](#) met on 22 February 2016 and considered a Report of the findings from responses to the Family Law Case Management questionnaire to sheriffs. The Committee is now considering a research specification to look into the use of case management tools in family actions in the sheriff courts. The Committee agreed that the research should ideally include face-to-face interviews with sheriffs, sheriff clerks and family law practitioners. In relation to hearing the voice of the child in family actions, the Committee is reviewing Form F9 following consultation with a number of relevant organisations and has appointed a working group who will make recommendations for improvement. The Committee is also consulting other jurisdictions via the European Network of Councils of the Judiciary to seek information on how such issues are dealt with in other member states. The Committee is also considering potential amendment of court rules regarding the requirements in family action for the intimation of proceedings to children.

The [ICT Committee](#) last met on 21 March 2016. The Committee considered 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. There was general agreement in the Committee that some form of online dispute resolution would require to be out in place, at some future date.



The [Personal Injury Committee](#) last met on 25 April 2016. It considered a revised draft Act of Sederunt and agreed the compulsory 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 stages and will also provide information in relation to the system of pursuers' offers. The Committee is continuing consideration of rules for personal injury cases under simple procedure.

The [Rules Rewrite Committee](#) last met on 29 March 2016 and 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.

Recent Rules

No rules of court have been made since the last Update newsletter was published.

Publications and other developments of interest

Membership

As the tenure period for inaugural members is due to expire in May 2016, a membership review has been carried out. A recruitment exercise is ongoing seeking to appoint a solicitor, up to two consumer representative and up to two Lord President members (suitable individuals who may be appointed by the Council). Suitable candidates have now been identified. The Lord President requires to consult with the Law Society and the Scottish Ministers before members can be appointed.

The Lord President has also decided to make new appointments, extending the Council's current membership by adding two newly appointed judicial members. The Right Hon. Lord



Boyd of Duncansby and Sheriff Sean Murphy QC were appointed as Council members on 15 April 2016.

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

The Act which received Royal Assent on 14 January 2016 makes provision for the holding of public inquiries in respect of certain deaths and sets out the framework within which the inquiry rules will add the necessary detail. The Act amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 and confers responsibility upon the Council for the review of practice and procedure followed in inquiry proceedings, including the drafting of inquiry procedure rules. As this is a new policy area for the Council, a working group has been established with a remit to: “*consider the secondary legislation required to facilitate implementation of The Inquires into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 and to make proposals for draft inquiry procedure rules for consideration by the Scottish Civil Justice Council*”. The working group will be chaired by Sheriff Principal Abercrombie and the first meeting was held on 9 May 2016. A full list of members can be seen [here](#). Ongoing progress will be noted via this update and under the Committee pages on the SCJC website.

Consultation on draft Simple Procedure Rules

The consultation period on the draft rules of court for simple procedure ran from 25 November 2015 to 2 March 2016. 42 responses to consultation were received from a range of organisations and individuals. The responses were published on the SCJC website on 1 April 2016. The draft Simple Procedure Rules, revised in the light of the consultation responses, were considered by the Council at its 16 May meeting.



Feedback

The Council welcomes all 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](#).