



## Scottish Civil Justice Council Update – Issue 4: June 2016

### Council Activity

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#### Committee remits

At the Council meeting on 16 May 2016, Council members considered a paper proposing revision to the remits of its established committees. The paper proposed a number of changes in order to standardise the layout of the remits and to bring them up-to-date. Proposals for revised remits are due to be considered at the next Council meeting on 11 July 2016.

#### Secondary Legislation

At the Council meeting on 16 May 2016, Council members considered draft rules in the following areas and agreed that they be submitted to the Court of Session for consideration:

- Amendment of Form of Charge for Payment – to amend the forms of charge for payment to clarify that the debtor will only be liable to be sequestered if his or her total debts amount to £3,000 or more. It also replaces some outdated terminology.
- Fees of solicitors in the sheriff court – to make provision to enable a sheriff court auditor taxing a judicial account of expenses to increase or reduce an inclusive fee in appropriate circumstances, in line with the Auditor of the Court of Session.

#### Ongoing work

- Protective Expenses Orders – the Council considered a paper produced by Lord Malcolm in relation to the prescribed test and procedure regulating applications under Chapter 58A of the Rules of the Court of Session. Draft rules are due to be considered at a future meeting. The Council agreed that there was a need to consult on the draft rules, once available.



## Committee Activity

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The [Access to Justice Committee](#) last met on 14 June 2016. The Committee considered its remit and agreed a revision for submission to the Council. Draft rules were considered in relation to lay representation for non-natural persons (companies and other organisations) to implement sections 95-98 of the Courts Reform (Scotland) Act 2014. The Committee agreed to submit the draft rules to the Council's 11 July 2016 meeting, for their consideration. The Committee also considered an overview of the rules relating to lay representation and lay support and a summary of the guidance available. At its next meeting, the Committee will be considering the draft Simple Procedure (Special Claims) Rules. The Committee welcomed two new members: Jane Williams, who has recently been appointed to the Council as a Consumer Representative and Dean Purdie, a solicitor.

The [Costs and Funding Committee](#) last met on 24 May 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 and has agreed to submit a Policy Discussion Paper, setting out its policy proposals, to the Council for consideration. The Committee considered detailed proposals in relation to Pre-action Protocols and Pre-Litigation Fees. This will be considered further at the committee's next meeting. Following his appointment as a Council member, Brandon Malone has been appointed as a member of the Costs and Funding Committee.

The [Family Law Committee](#) met on 09 May 2016 and considered a paper submitted by the Office of the Advocate General proposing an amendment to the Child Support Rules 1993 to ensure it is competent for officials in the Child Maintenance Group, Department for Work and Pensions to sign applications for liability orders under section 33(2) of the Child Support Act 1991 on behalf of the Secretary of State. The Committee will consider draft rules to implement this proposal at its 20 June 2016 meeting. The Committee also agreed draft amendments to Ordinary Cause Rule 33.7(1)(h) so that a copy of the initial writ is not intimated to the child in cases where the child is not a party to the proceedings and amendments to Court of Session Rule 62.78(2) and Rule 10(2) of the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and



Matters of Parental Responsibility Rules) 2006 to clarify that they only apply where enforcement is sought. It agreed that these draft rules be submitted to the Council for consideration and approval.

The [ICT Committee](#) last met on 13 June 2016. The Committee agreed a revised remit for consideration by the Council. Lord Justice Briggs, Deputy Head of Civil Justice in England and Wales, joined the meeting by video conference for a wide-ranging discussion of his proposals for an online court set out in his *Interim Report of the Civil Courts Structure Review* in England and Wales. The Committee considered how these proposals might be relevant in the Scottish civil justice system. Lord Woolman, Chair of the Judicial ICT Committee, has recently been appointed to the Committee.

The [Personal Injury Committee](#) met on 06 June 2016. It considered revised rules and a revised compulsory personal injury pre-action protocol. The Committee also considered in detail the recommendations from the Costs and Funding Committee (representatives of which attended the meeting) in relation to protocol expenses for work undertaken during the compulsory pre-action protocol stages. It agreed that the draft Act of Sederunt and Personal Injury Pre-Action Protocol be revised in line with discussion at the meeting and thereafter submitted to the Council for consideration and approval. The Committee is continuing consideration of rules for personal injury cases which are to be included in the proposed Simple Procedure (Special Claims) Rules.

The [Rules Rewrite Committee](#) last met on 31 May 2016 and is continuing with work to implement the remaining areas of the Courts Reform (Scotland) Act 2014. This includes vexatious proceedings, interdicts, and review of permission to appeal procedures. The Committee commenced the first stage of work under the Rules Rewrite Project with consideration of policy discussion papers in three areas: *Statement of Principles/Overriding objectives*; *Case Management Model*; and *Form, Style and Language* and will prepare a summary of proposals in due course. Work is also underway on drafting rules to support the Bankruptcy Consolidation Bill.

The [SCJC Working Group](#) – Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The working group met on 9 May 2016 and agreed the timetable of the work required



to implement the 2016 Act. The working group will consider the interaction of the sheriff court Ordinary Cause Rules with inquiry proceedings and the desirability of including a statement of principle in the rules. At the request of members, the Lord President has appointed Jackie Powell, SCTS ICMS Project Leader as an observer to the working group to assist with practical aspects of policy development in so far as they impact upon SCTS IT infrastructure.

## Recent Rules

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### [Act of Sederunt \(Simple Procedure\) 2016](#)

This instrument was made on 09 June 2016 and comes into force on 28 November 2016. It provides rules of court, forms and a set of standard orders for the simple procedure, which will replace the small claims procedure for cases which have a value of £5,000 or less in the sheriff court.

### [Act of Sederunt \(Sheriff Appeal Court Rules 2015 and Sheriff Court Rules Amendment\) \(Miscellaneous\) \(2016\)](#)

This instrument was made on 07 June 2016 and comes into force on 07 July 2016. It amends the Act of Sederunt (Sheriff Appeal Court Rules) 2015 and various sheriff court rules, principally to address issues that have arisen since the Sheriff Appeal Court assumed its civil jurisdiction and competence on 01 January 2016. It also makes minor miscellaneous amendments to correct errors.

## Publications and other developments of interest

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### **Annual Report 2015/16**

The Council has published its third [Annual Report](#) outlining its achievements, accounts and a summary of the rules prepared during the year.





The Report also covers the Council's engagement events, including a Winter Tour held in November and December when three informal sessions were provided to explain more fully court reform rules to both staff and court users.

### **Report on the consultation on the draft Simple Procedure Rules**

The Council has published its Report on the consultation on the draft Simple Procedure Rules. The [Report](#) summarises the responses received to the consultation and sets out the main changes made. The responses were generally supportive about the approach taken to the new procedure.

The consultation proposed two sets of simple procedure rules, the 'core' simple procedure rules and the Simple Procedure (Special Claims) Rules. The consultation only included draft 'core' rules and a number of respondents called for the second set, which includes housing and personal injury actions, to be consulted upon. It has therefore been decided that the Simple Procedure (Special Claims) Rules be implemented in time for the beginning of the legal year in 2017, to allow time for informal consultation. The 'core' Simple Procedure Rules will be commenced in November 2016.

### **Research**

The [Final Report](#) of the Scottish Legal Aid Board research project, jointly funded by the Council, on the drivers and motivations that determine how people seek to resolve small claims disputes has now been published. It recommends a critical look into whether the justice system supports people early enough towards finding a resolution to their problems.

### **Membership**

Following an open and competitive recruitment exercise, five members have been appointed to the Council from 28 May 2016. They are:

- Joel Conn (solicitor member)



- Ian Maxwell (consumer representative member)
- Jane Williams (consumer representative member)
- Brandon Malone (LP member)
- Employment Judge Joseph d’Inverno (LP member)

Three of these are new appointments and two (Mr Maxwell and Judge d’Inverno) are re-appointments. Members’ biographies can be found on the [Current Council Members](#) page on the Council’s website.



## Feedback

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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](#).