



## Scottish Civil Justice Council Update – Issue 6: October 2016

### Council Activity – 03 October 2016 meeting

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#### Committee membership

The Council approved the following appointments, taking effect from 03 October 2016, unless otherwise stated:

- The appointment of Kenneth Campbell QC to the Rules Rewrite Committee
- The appointment of Ian Shanks to the Rules Rewrite Committee
- The re-appointment of Sheriff C Stoddart to the Costs and Funding Committee for a further three year period from the expiry of his tenure on 18 November 2016
- The re-appointment of Alan Rogerson to the Costs and Funding Committee for a further three year period from the expiry of his tenure on 18 December 2016
- The appointment of Sheriff Principal Turnbull to replace Sheriff Principal Scott on the Access to Justice and the Rules Rewrite Committees.

#### Ongoing work

- Protective Expenses Orders (PEOs) – the Council considered draft rules to regulate applications for PEOs in environmental proceedings. Members suggested a number of revisions to the rules and it was agreed that a revised draft of the rules should be submitted for consideration at the next appropriate meeting. Members also agreed that the draft rules should be consulted and it was agreed that consultation proposals would also be formulated to be considered alongside the draft rules.
- Counter Terrorism and Security Act 2015 – the Council considered a policy request from Scottish Government for amendment to court rules in relation to temporary exclusion orders introduced by the Counter Terrorism and Security Act 2015. Members instructed draft rules to be prepared for consideration at the next appropriate Council meeting.



- Review of Sheriff Appeal Court Rules – the Council agreed in principle, subject to resources, to a request from Sheriff Principal Abercrombie to bring forward the review of the Sheriff Appeal Court Rules from mid-2017 to now to address some issues since the creation of the court.

## Secondary Legislation

This section provides an update on draft rules of court that have been considered by the Council and have been submitted to the Court of Session for consideration. The [Recent Rules](#) section below details rules that have subsequently been approved by the Court of Session and embodied in an Act of Sederunt

- There are no outstanding matters submitted to the Court of Session for consideration.

## Recent Rules

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### [Act of Sederunt \(Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment\) \(Serious Crime Prevention Orders etc.\) 2016](#)

This instrument was made on 19 October 2016 and comes into force on 12 December 2016. It amends Chapter 76 of the Rules of the Court of Session Rules 1994 and the Summary Application, Statutory Applications and Appeals etc. Rules 1999 in consequence of the amendments made to the Proceeds of Crime Act 2002 by the Serious Crime Act 2015. These amendments extend the availability of Serious Crime Prevention Orders so that they can be made in Scotland.

The Act of Sederunt also makes changes to the Rules of the Court of Session Rules 1994 and the Summary Application Rules 1999 in consequence of schedule 1 (apart from paragraph 7) of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.



### **[Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Postal Administration\) 2016](#)**

This instrument was made on 18 October 2016 and comes into force on 16 November 2016. It amends Chapter 74 of the Rules of the Court of Session 1994 in consequence of the Postal Administration (Scotland) Rules 2016. It provides that an application for a postal administration order is to be made by petition to the Court of Session and makes minor miscellaneous amendments to Chapter 74 in consequence of this.

### **[Act of Sederunt \(Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment\) 2016](#)**

This instrument was made on 12 October 2016 and comes into force on 28 November 2016. It makes various changes to the provisions governing the taxation of accounts of expenses in the sheriff court and Sheriff Appeal Court, and to the rules regulating the fees of shorthand writers.

### **[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(No. 4\) \(Simple Procedure\) 2016](#)**

This instrument was made on 11 October 2016 and comes into force on 28 November 2016. It amends the Rules of the Court of Session 1994, the Sheriff Appeal Court Rules and various sheriff court rules in consequence of the commencement of simple procedure on 28th November 2016. Paragraph 7 makes minor and typographical amendments to the Act of Sederunt (Simple Procedure) 2016.

### **[Act of Sederunt \(Sheriff Court Bankruptcy Rules\) 2016](#)**

This instrument was made on 06 October 2016 and comes into force on 30 November 2016. It makes provision about the procedure to be followed in petitions for sequestration, and in certain applications and appeals to the sheriff relating to sequestrations. The rules apply when the petition for sequestration is made on or after 30th November 2016.



### **[Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment\) \(Bankruptcy \(Scotland\) Act 2016\) 2016](#)**

This instrument was made on 06 October 2016 and comes into force on 30 November 2016. It makes changes to court rules to take account of the coming into force of the Bankruptcy (Scotland) Act 2016.

### **[Act of Sederunt \(Lay Representation for Non-Natural Persons\) 2016](#)**

This instrument was made on 30 August 2016 and comes into force on 28 November 2016. It makes provision regarding lay representation for non-natural persons in civil proceedings. It partly implements Chapter 4 (lay representation for non-natural persons) of the Courts Reform (Scotland) Act 2014.

### **[Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(No. 3\) \(Miscellaneous\) 2016](#)**

This instrument was made on 30 August 2016 and came into force on 03 October 2016. It makes miscellaneous amendments to the Act of Sederunt (Form of charge for payment) 1988, the Ordinary Cause Rules 1993, the Act of Sederunt (Child Support Rules) 1993, the Rules of the Court of Session 1994 and the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006.

### **[Consultation on draft rules by Court of Session](#)**

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### **[Act of Sederunt \(Electronic Authentication\) 2016](#)**

On 2 September 2016, the Court of Session received a request from the Scottish Courts and Tribunal Service to provide rules allowing for the authentication of documents by court



staff, and by judicial office holders, by electronic means. Under section 104(5) of the Courts Reform (Scotland) Act 2014, before making an act of sederunt which makes provision about the procedure and practice to be followed in civil proceedings in the sheriff court or in the Sheriff Appeal Court, the Court of Session must consult with the Scottish Civil Justice Council and take into consideration any views expressed by the Council with respect to that matter.

The Council and its ICT Committee were invited to consider proposed draft rules extending the means of authentication of documents by the courts so as to include electronic authentication. Following consideration by correspondence, the Council advised the Court of Session that it agreed the approach taken in the draft rules. The instrument was subsequently made on 30 September 2016 and comes into force on 31 October 2016.

## Committee Activity

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The [Access to Justice Committee](#) last met on 17 October 2016. The Committee approved a draft timetable and draft rules in relation to rules for special claims under the new simple procedure and agreed to submit them to the Council for approval at its November meeting. It is intended that an informal consultation exercise will take place between December 2016 and February 2017. The Committee also further considered the rules relating to lay representation and lay support in the Scottish courts alongside the rules relating to Public Interest Interventions in the Court of Session.

The [Costs and Funding Committee](#) last met on 5 September 2016. The Committee approved amendments to the Table of Fees to incorporate a pre-litigation fee and to allow the Auditor of the sheriff court the power to increase or reduce an inclusive fee in Chapter II of the Table of Fees, in appropriate circumstances. These recommendations were approved by the Council at its meeting of 3 October 2016 and are detailed above. The Committee also considered proposals and draft rules to introduce a system of pursuers' offers to the civil courts.



The [Family Law Committee](#) met on 10 October 2016 and considered a joint paper by the Scottish Government and the Mental Welfare Commission for Scotland. The paper proposes amendments to the rules of court in relation to: the appointment of curators *ad litem* to defenders; the terminology of the existing rules; and the simplified divorce and dissolution forms. The Committee agreed that draft rules should be developed for consideration at the next Committee meeting. The Committee considered revised forms to replace the existing Form F9 (the sheriff court form currently used to intimate a family action to a child and seek his/her views) and noted that the Form F9 subgroup met on 15 September 2016 to consider further comments from stakeholders on the proposed forms F9.1 and F9.2 and that Scottish Women's Aid had offered to pilot the forms as part of its joint project on children's participation with the Children and Young People's Commissioner Scotland. The Committee indicated that arrangements should now be made, with the other organisations who had offered to assist, for groups of children to be consulted on the revised new forms.

The Committee noted that the Lord President and the relevant Sheriffs Principal had agreed to research interviews being conducted with sheriffs and sheriff clerks in Glasgow Sheriff Court, Inverness Sheriff Court, Kirkcaldy Sheriff Court and Jedburgh Sheriff Court; a tender for the work submitted by Dr Richard Whitecross of Edinburgh Napier University was accepted and the inception meeting of the Research Advisory Group meeting would be held on 10 October 2016. It is intended that the outcomes from the research will provide the Committee with a broader understanding of what is required for judicial case management to work well.

The [ICT Committee](#) last met on 10 October 2016. The Committee further considered how Lord Justice Brigg's proposals for an online court in England and Wales might be relevant in the Scottish civil justice system and anticipate submitting a paper on the subject to the Council in due course. The Committee also considered what proposals it wished to see in an upcoming Discussion Paper on ICT in the courts prepared by the Rules Rewrite Drafting Team as part of the Rules Rewrite Project.

The [Personal Injury Committee](#) met on 17 October 2016. It considered in detail a revised set of draft rules for personal injury cases which are to be included in the proposed Simple



Procedure (Special Claims) Rules and suggested some amendments be made prior to the rules being submitted to the Council for approval at its November meeting. It is intended that an informal consultation exercise will take place between December 2016 and February 2017. The Committee also considered a draft clinical negligence pre-action protocol developed by the Pre-Action Protocol Reference Group Clinical Negligence Sub-Group and agreed that the introduction of a compulsory Clinical Negligence Pre-Action Protocol should be postponed to allow the NHS National Services Scotland Central Legal Office trial of a voluntary protocol, which started in September 2016, to bed in and be monitored and evaluated. A working group, which will meet in early 2017, was set up to develop a compulsory industrial disease pre-action protocol for the consideration of the full Committee.

The [Rules Rewrite Committee](#) is continuing with work to implement the remaining areas of the Courts Reform (Scotland) Act 2014 including the review of permission to appeal procedures. The first stage of work under the Rules Rewrite Project is ongoing and the Committee has recently considered policy discussion papers on otiose provisions and case management powers. The Committee recently submitted draft rules to support the Bankruptcy Consolidation Bill to the Council. These were subsequently approved and made by the Court of Session as noted under 'Recent Rules' above. The Committee will shortly commence reviewing the rules for Judicial Review proceedings this month.

The [SCJC Working Group](#) – *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*. The working group last met on 14 September 2016. The working group has agreed the terms of a statement of principle which will be incorporated in the rules. The working group agreed proposed consultation arrangements for the draft rules which were approved by the Council on 10<sup>th</sup> October 2016. The working group is next to consider and agree a set of draft rules for the purpose of stakeholder consultation. It is anticipated that draft rules and a draft consultation document will be submitted to the Council in November.



## Publications and other developments of interest

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### Membership

Following an open recruitment campaign, a new advocate member, Lynda Brabender, has been appointed to the Council for a three year term. Further details can be found on the Council's [website](#).

### Interim Update

The Council has published an [update](#) on its progress in meeting its priorities set out in its Annual Programme for 2016-17.

### Doors Open Day

Parliament House hosted a Doors Open Day on Saturday 24 September 2016, which was well attended by the public. The Council's Secretariat ran a stall and provided information about the work of the Council and its committees.



## 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](#).