



**Scottish
Civil Justice
Council**



Interim Report on Priorities for 2019/2020:

August 2019

The Council agreed the following work priorities which are published in its annual programme:

High	<ul style="list-style-type: none"> ● Brexit ● Rules Review: Act of Sederunt (Simple Procedure) 2016 ● Case management in sheriff court family actions ● Implementation of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 ● Judicial rate of Interest ● Rules of the Court of Session: Chapter 42A: Case management of certain personal injuries actions ● Proceeds of Crime Act - Part 11 Order ● Review of Inner House Rules ● Extension of Simplified Divorce
Medium	<ul style="list-style-type: none"> ● Lay representation, lay support and party litigants ● Compulsory pre-action protocols: clinical negligence ● Compulsory pre-action protocols: disease ● Ordinary Cause Rules: procedures for appointment of assessors under the Equality Act ● Rules Review: Sheriff Appeal Court Rules: 2015 No.356 Act of Sederunt (Sheriff Appeal Court Rules) 2015
Low	<ul style="list-style-type: none"> ● EU Small Claims - Implementation of EU regulation 2015/2421

● Not started ● In progress ● Complete

This report provides the Council with an update on progress against its priorities for 2019/2020

High priorities

Subject	Status	Lead	Update:	Next steps:
<i>Brexit</i>	In progress	SCJC	<p>07/03/19 - LPPO are scrutinising UK and SG statutory instruments making provision in the event of a 'no deal' Brexit, with a view to assessing whether court rules are urgently required.</p> <p>09/05/19 - The 29 March 2019 deadline for the UK leaving the EU has now been extended. If there is a short 'no deal' period within which to put through critical Brexit-related amendments, this work will require to be given a very high priority. A comprehensive scoping exercise has been carried out to identify any urgent areas of work which have been noted by the Council.</p>	Maintaining a watching brief - when published instruments will be considered for impact.
<i>Rules Review: Act of Sederunt (Simple Procedure) 2016</i>	In progress	ATJ	29/04/19 - Committee considered & agreed a number of matters that will not be taken forward as rules amendments; Secretariat consulting with SCTS LIT and ICMS teams on all agreed rules revisions and revised draft instrument being prepared for consideration by ATJC/SCJC.	Revised draft rules to be considered by ATJ in September 2019 by correspondence.
<i>Case management in sheriff court family actions</i>	In progress	FLC	<p>26/03/19 - Committee instructed the preparation of an initial draft instrument, with a suggested outline / structure for new draft rules; Chair instructed meeting to be held with drafter & some FLC members in order to consider specific drafting points</p> <p>08/07/19 – Committee discussed outcomes from focus group discussions and instructed draft rules.</p>	Draft rules being prepared for consideration at the next committee meeting provisionally scheduled for 11 November 2019.

Implementation of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018:

<p>section 8 - QOCS</p>	<p>In progress</p>	<p>CAFC</p>	<p>01/04/19 - Draft rules considered at PIC meeting; members agreed the principles of the QOCS regime set out in the draft rules, subject to an amendment making provision for the recovery of post tender expenses only.</p> <p>09/05/19 – CAFC members considered and approved draft rules by correspondence – drafting comments provided and under consideration by LPPO.</p> <p>Aug 2019 - Draft rules shared with APIL, Faculty of Advocates and Law Society of Scotland</p>	<p>Drafter considering final revisions to instrument; Rules timetabled to be issued to Council for consideration by correspondence @ September 2019</p>
<p>section 9 - Representation free of charge (pro bono)</p>	<p>In progress</p>	<p>CAFC</p>	<p>25/09/18 – SG Policy paper received on Section 9.</p> <p>05/11/18 – CAFC considered SG policy paper; draft rules instructed.</p> <p>Aug 2019 - Draft rules shared with APIL, Faculty of Advocates and Law Society of Scotland</p>	<p>Policy paper and draft rules prepared for 09 September 2019 committee meeting.</p>
<p>section 10 - Third Party funding of civil litigation</p>	<p>In progress</p>	<p>CAFC</p>	<p>02/10/18 – SG policy paper received on Section 10. Section 10 of the Act is intended to implement recommendations 77 and 78 made by Sheriff Principal James Taylor in his 2013 Review of the Expenses and Funding of Civil Litigation in Scotland.</p>	<p>Policy work timetabled to commence Autumn 2019 with a view to placing policy paper before committee for consideration in December 2019.</p>
<p>section 11 - Awards of expenses against legal representatives</p>	<p>In progress</p>	<p>CAFC</p>	<p>04/12/18 - Secretariat consulted on policy with Law Society of Scotland, Faculty of Advocates and Association of Commercial Attorneys. Responses received ahead of the February 2019 committee</p>	<p>Drafter is considering final revisions to instrument; tabled for 09 September 2019 committee meeting.</p>

			<p>meeting.</p> <p>09/05/19 - CAFC considered draft rules at February meeting; amendments instructed.</p> <p>Aug 2019 - Draft rules shared with APIL, Faculty of Advocates, Law Society of Scotland and ACA</p>	
sections 21 & 22 - Group Proceedings	Work not started	TBC	Work programme to be considered in due course.	Structure and methodology to be considered - possible cross committee membership.
<i>Judicial rate of Interest</i>	In progress	SCJC	14/02/19 – Secretariat research work commenced.	No set timetable – research ongoing to develop policy paper for Council consideration.
<i>Rules of the Court of Session: Chapter 42A: Case management of certain personal injuries actions</i>	In progress	PIC	<p>01/04/19 - Draft instrument considered and approved at PIC meeting; members agreed that draft rules should be considered by a group of experienced practitioners and consideration given as to whether it will be appropriate for the equivalent Sheriff Court Rules (Chapter 36A of the Ordinary Cause Rules) to be amended as part of this exercise.</p> <p>28/05/19 - Focus group meeting to consider draft rules, practice note and possible extension to 36A.</p> <p>12/08/19 – Draft rules considered and approved by PIC via correspondence.</p>	Draft instrument tabled for Council consideration on 09 September 2019.
<i>Proceeds of Crime Act - Part 11 Order</i>	In progress	SCJC	09/04/19 – Policy paper received from the Home Office seeking court rules to support implementation of POCA 2018 Order - due to commence on 12 November 2019. This Order makes further amendments to the recent changes to POCA introduced under the Criminal Finances Act 2017 (rules implementing these changes commenced in June 2019).	Policy paper and draft instrument under development for consideration by Council in September.

			Secretariat and Lord President's Private Office considering request and preparing a policy paper and draft rules for Council consideration. Consultation with SCTS LIT and COPFS civil recovery unit on operational matters.	
<i>Review of Inner House Rules</i>	In progress	TBC	01/02/19 - LPPO working with LP to develop policy.	
<i>Extension of Simplified Divorce</i>	In progress	FLC	16/04/19 – Letter issued to SG seeking update on prospective consultation on a draft order; 14/05/19 – Response received from Ash Denham MSP; SG consultation planned for late 2019. 06/08/19 – Engagement with SG; meeting scheduled with SG in September 2019 on anticipated time scales for this work.	Policy development and engagement with stakeholders.
<i>Age of Criminal Responsibility (Sc) Act 2019</i>	In progress	FLC	12/06/19 – Currently awaiting submission of policy paper (anticipated Autumn 2019). It is expected that changes will require to be made to the Ordinary Cause Rules to allow applications in respect of searching, interviewing and taking samples from those aged under 12 years old.	A Policy Paper is anticipated in Autumn 2019.

Medium priorities

Subject	Status	Lead	Update:	Next steps:
<i>Lay representation, lay support and party litigants</i>	Work not started	ATJ	09/07/18 – The Access to Justice Committee made a number of recommendations for court rules, which were approved by Council. The Council remitted the matter back to the Access to Justice Committee to take forward the development of draft rules.	Work on draft rules timetabled to commence in November 2019.
<i>Compulsory pre-action protocols: Clinical Negligence</i>	In progress	PIC	01/04/19 – Drafting of rules instrument	Draft rules instrument timetabled for PIC to consider by correspondence in September 2019.
<i>Compulsory pre-action protocols: Disease</i>	Work not started	CAFC	09/04/18 - PIC approved procedure contained in PAP; to be remitted to CAFC for development of related fee structure 28/05/18 - PIC paper submitted to CAFC to consider expenses for the disease pre-action protocol.	Work timetabled to commence November 2019.
<i>Ordinary Cause Rules: appointment of assessors under the Equality Act</i>	In progress	SCJC	20/07/18 - Rules request from SCTS Court Services Branch inviting the Council to consider making court rules for the appointment of Equality Assessors and regulating the payment of their fees and expenses. 28/02/19 - Policy paper prepared; legal advice sought from LPPO.	LPPO to consider and advise.

<p><i>Rules Review: Sheriff Appeal Court Rules: 2015 No.356 Act of Sederunt (Sheriff Appeal Court Rules) 2015</i></p>	<p>In progress</p>	<p>RRC</p>	<p>01/02/19 - Responses collated and paper prepared with recommendations for changes to the SAC rules: paper issued to SP Stephen with a request for her, as Convenor of the SPs and President of the SAC, to co-ordinate further input from SPs.</p>	<p>Awaiting response from Sheriff Principal Stephen</p>
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Low priorities

Subject	Status	Lead	Update:	Next steps:
<p><i>EU Small Claims - Implementation of EU regulation 2015/2421</i></p>	<p>Work not started</p>	<p>ATJ</p>	<p>25/04/19 – A minor rule change may be required to the EUSC Rules; to be considered further when Brexit position is clear.</p>	<p>Pending clarification of Brexit - rule changes may be required.</p>

Other matters progressed

Subject	Status	Lead	Update:	Next steps:
<i>Rules of Court of Session: Signing of petitions and answers</i>	In progress	SCJC	19/07/19 – Council approved draft rules to permit a Solicitor to sign a petition in lieu of Counsel.	Draft rules to be made and laid in September 2019.
<i>Insolvency Recast exercise</i>	Completed	SCJC	27/06/19 – Council approved draft instrument making amendments to the ROCS/ Sheriff Court Company Insolvency Rules 1986 to correct errors/omissions from previous rules instrument.	Made: 17 July 2019 Laid: 19 July 2019 Coming into force: 16 August 2019
<i>Reporting Restrictions</i>	In progress	SCJC	29/04/19 – Request from the BBC inviting Council to consider a report outlining concerns about court orders containing reporting restrictions; 19/07/19 – SCTS reissued staff guidance	Policy proposals will be issued to SCJC and CCRC for consideration in October; if rules instructed, anticipated that drafting work will be timetabled for completion by the end of 2019
<i>Rules of the Court of Session: Chapter 49</i>	In progress	FLC	26/03/19 – The FLC considered a request from the Court of Session Family Action Users Group seeking changes to Chapter 49 of the Rules of the Court of Session. The Committee agreed rule changes relating to timescales and the lodging and intimation of productions and witness lists. Since the proposal is to make changes to the RCS only at this stage, it is suggested that it might be logical for an initial draft instrument to be developed by the User Group and then presented to the FLC at a later date.	The FLC invited the Court of Session Family Actions User Group to prepare an initial draft of court rules for consideration by the Committee.

Legislation and Case Law

In addition to the major areas of work identified above, the Council has an ongoing function to review court rules in light of legislative change or developments in case law. This work can have an impact on existing priorities as it is often driven by external implementation timescales.

During 2019/2020, the Council may be invited to consider the impact on court rules of the following pieces of legislation/case law:

- **Courts Reform (Sc) Act 2014: Simple Procedure: special claims**
Work on 'special claims' has been paused pending conclusion of the Review of Simple Procedure Rules. It is anticipated that this work will recommence in the spring.
- **Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019**
The Act makes provision in relation to the assumed rate of return on investment of particular damages awarded in personal injury cases and provisions for periodical payments of various damages awarded in personal injury cases. Implementation timescales are unknown at present - the secretariat is liaising with the Scottish Government.
- **DWP - Powers of Entry for Scotland - Judicial Warrant Proposal**
Department for Work and Pensions proposal to amend powers of entry and to add an additional safeguard of seeking a judicial warrant where initial access to premises is refused, or is expected to be refused from the outset. Secretariat considering impact on court rules.
- **Court Opinion – Siteman Painting and Decorating Services Limited -v- Simply Construct (UK) LLP**
A discussion paper is tabled for Council consideration at 09 September 2019 meeting.

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