

ACTIVITY SINCE PREVIOUS MEETING**Purpose**

1. To provide members with information on activity which has taken place since the last meeting.

Committee Activity

2. Committee activity reports are provided at **Annex A**.

Progress of actions arising from previous Council meetings

1) Research- case management in family actions	Secretariat	In progress SLAB ADR Research report published on 19 May 2016. Report to be considered by Access to Justice Committee in due course. Report on case management in family actions prepared by the Family Law Committee's sub-group was considered at the Council's November 2017 meeting and members agreed that a public consultation on the recommendations should take place at this stage. Consultation launched: 30 May 2018 and closed 22 August 2018. FLC considered the consultation report at its meeting in 08 October 2018. The Sub Group agreed to undertake further analysis of the consultation responses. Sub Group meeting 14 January 2019 – note of discussions issued to members for approval.
2) Review of Sheriff Appeal Court Rules	Secretariat	In progress A number of meetings have been held

<p>At the October Council meeting, members agreed in principle to bring forward the review of the SAC Rules, subject to resource requirements.</p>	<p>LPPO</p>	<p>with Sheriff Principal Abercrombie and the Sheriff Appeal Court clerks to discuss what improvements could be made to the Rules.</p> <p>A targeted consultation took place and feedback was received from the Faculty of Advocates, Sheriffs' Association & SAC clerks; responses have been collated and a paper prepared with recommendations for changes to the SAC rules. This paper has been issued to SP Stephen with a request for her, as Convenor of the Sheriffs Principal and President of the SAC, to co-ordinate further input from SPs.</p>
<p>3) Voice of the child: form redesign proposals</p>	<p>Secretariat LPPO</p>	<p>In progress</p> <p>The Family Law Committee continues to consider all the issues raised in relation to the hearing of the voice of the child. Draft forms have been revised in light of the feedback previously obtained and are being considered by a graphic designer to make them more child-friendly and visually appealing.</p> <p>Draft rules and forms approved by FLC on the 8th of October 2018.</p> <p>Rules approved by SCJC at its 21 January 2019 meeting.</p>
<p>4) Lay representation</p>	<p>Secretariat LPPO</p>	<p>In progress</p> <p>The Access to Justice Committee continues its review into lay representation and lay support in the Scottish courts and in particular considered the issue of how rules of court should regulate lay representatives and lay supporters and whether or not lay representatives should be able to receive travel and</p>

		<p>subsistence costs from the litigant.</p> <p>On 09 July 2018 meeting, the Council considered a report from the Access to Justice Committee setting out recommendations following its review of lay representation and lay support in the Scottish courts. The Council was broadly supportive of the recommendations and following detailed discussions, approved the recommendations and remitted the matter back to the Access to Justice Committee for the preparation of draft rules. The Council agreed that the rules should avoid creating a right of audience for lay representatives and that a party should remain under an obligation to attend procedural hearings personally, unless the judge excuses the party's attendance on cause shown.</p> <p>LPPO drafting rules.</p>
5) Brexit	LPPO	<p>In progress</p> <p>Scoping exercise has been undertaken by LPPO to assess implications on rules of court. Results shared with members via correspondence.</p> <p>The Council were provided with an update paper at its 19 November 2018 meeting.</p> <p>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>
6) Judicial rate of interest	Secretariat	<p>In progress</p> <p>Paper considered at May Council meeting confirming that amendments to</p>

		<p>the rate of interest fell within the powers of the Council to regulate.</p> <p>Council agreed to write to the Scottish Government seeking the Government's views on how best to progress matters.</p> <p>04 June 2018 - Secretariat wrote to Gavin Henderson, SG for views.</p> <p>Secretary agreed in August 2019 that SCJC will take this forward. Secretariat will explore how the matter could be progressed and what initial research may be required with a view to preparing an options paper for Council.</p> <p>At its 21 January 2019 meeting, the Council agreed this should remain a high priority.</p> <p>Research currently being undertaken. It is anticipated that a paper will be issued for comment in the next few weeks.</p>
7) Rules Rewrite Project	RRP	<p>Paused</p> <p>Council approved that Rules Rewrite Project is paused for a period of at least 6 months. This decision was taken due to the Government having to target legal resources at preparing for a possible no deal Brexit.</p>

Rules made since last meeting

3. Four instruments have been made since the last meeting:

- Act of Sederunt (Computer Evidence in the Sheriff Court) (Revocation) 2019 comes into force on 5 March 2019. This Act of Sederunt revokes, so far as still in force, the Act of Sederunt (Computer Evidence in the Sheriff Court) 1969 and the Act of Sederunt (Computer Evidence in the Sheriff Court Amendment) 1970.

- [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Sanctions and Anti-Money Laundering\) 2019](#) comes into force on 29 March 2019. This Act of Sederunt provides a legal framework to enable the United Kingdom Government to make sanctions regulations to implement UN sanctions and impose autonomous sanctions; and for the purposes of detecting, investigating and preventing money laundering and terrorist financing. The Act also provides powers for Ministers to designate persons upon whom sanctions measures (such as travel bans and asset freezes) are to be applied and affords persons affected by those decisions an opportunity to apply to courts for those decisions to be set aside.
- [Act of Sederunt \(Taxation of Judicial Expenses Rules\) 2019](#) frames the relevant tables of fees to provide for unit-based charging and [Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment\) \(Taxation of Judicial Expenses\) 2019](#) makes procedural provisions for the taxation of judicial expenses. The rules come into force on the 29 April 2019.

Recommendation

4. **The Council is invited to note the progress of actions outlined in this paper and the committee activity updates provided.**

Scottish Civil Justice Council Secretariat

March 2019

Annex A**COMMITTEE ACTIVITY REPORT****Access to Justice Committee**

1. The [Access to Justice Committee](#) last met on 11 February 2019 and continued their work on the review of the Simple Procedure Rules. The Committee considered an options paper which drew together a research from Professor Tom Mullen, consultation responses received and outputs from an SCTS operational review. The Committee agreed a number of changes to the rules were appropriate. It is intended that the proposals will be placed before focus groups for feedback.

The Committee instructed draft rules to be prepared making discrete amendments to a number of simple procedure forms to highlight that forms can be uploaded via civil online. Due to time constraints, these rules will be passed straight to Council for consideration.

Costs and Funding Committee

2. The [Costs and Funding Committee](#) last met on 4 February 2019 and considered the following matters:

Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

5. The Committee was invited to consider draft rules of court on Sections 8 (Qualified One-Way Cost Shifting) and 11 (Awards of Expenses Against Legal Representation) of the Act. The Committee agreed to share the draft instrument in relation to section 8, with PIC for comment, prior to it being issued to Council for consideration.

8. Next meeting of the Committee: Monday 13 May 2019.

Family Law Committee

9. The [Family Law Committee](#) last met on 08 October 2018. The Committee's case management sub-group reconvened on 14 January 2019 and considered the responses from the consultation on case management in family proceedings in the sheriff court. A note of these discussions has been issued to members for approval with a view to final proposals being placed before the committee for consideration in due course.

Hearing the voice of the child

10. Draft rules were approved by Council at its meeting on 21 January 2019. They are undergoing the styling process prior to being placed before the Court.

ICT Committee

11. The [ICT Committee](#) last met on 27 August 2018. There is no further update.

Personal Injury Committee

12. The [Personal Injury Committee](#) last met on 08 October 2018 and considered the following matters:

- The Committee agreed that informal feedback on the personal injury pre-action protocol should be obtained from Committee members' organisations in the first instance, by way of a questionnaire developed by the Secretariat.
- The Committee considered proposals to amend Chapter 42A ROCS and relevant feedback from the NHS Central Legal Office. The Committee agreed that there should be further informal consultation on the proposals and that some outstanding matters required further consideration. The Secretariat is to arrange a meeting with RRDT, Amber Galbraith and Maria Maguire to discuss these matters and report back to PIC.

Rules Rewrite Committee

13. The [Rules Rewrite Committee](#) last met on 03 July 2018. There is no further update.

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