



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

11th Meeting, 2019 (Session 5)

Tuesday 2 April 2019

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Management of Offenders (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
3. **Subordinate legislation:** The Committee will consider the following negative instrument—

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (SSI 2019/74).
4. **Work programme:** The Committee will consider its work programme.

Stephen Imrie
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: justicecommittee@parliament.scot

The papers for this meeting are as follows—

Agenda item 3

Paper by the clerk - SSI 2019-74

J/S5/19/11/1

Agenda item 4

Private paper 1 - work programme

J/S5/19/11/2 (P)

Private paper 2 - work programme

J/S5/19/11/3 (P)

Private paper 3 - work programme

J/S5/19/11/4 (P)

Justice Committee

11th Meeting, 2018 (Session 5), Tuesday 2 April 2019

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment\) \(Taxation of Judicial Expenses\) 2019 \(SSI 2019/74\) \[see page 3\];](#)
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 22 April 2019.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. **The Committee is invited to consider the instrument.**

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION, SHERIFF APPEAL COURT RULES AND ORDINARY CAUSE RULES AMENDMENT) (TAXATION OF JUDICIAL EXPENSES) 2019 (SSI 2019/74)

Introduction

10. The instrument is made under section 1(2) of the Litigants in Person (Costs and Expenses) Act 1975(b), sections 103(1), 104(1), 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014(c). The Act of Sederunt makes provision for—

- revocations of, and amendments to, rules consequential on the coming into force of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019; and
- amendments to the rules of procedure governing the taxation of accounts of expenses in civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court.

11. Further details on the purpose of the instrument can be found in the policy note (see below).

12. The instrument comes into force on 29 April 2019.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 19 March 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 22 April 2019.

Policy Note: Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (SSI 2019/74)

Background

1. The Act of Sederunt makes amendments to the rules of court governing the taxation of accounts of expenses in civil proceedings in the Court of Session, Sheriff Appeal Court and the sheriff court.
2. On 19 November 2018, the Scottish Civil Justice Council considered and approved the draft rules developed by its Costs and Funding Committee and agreed that they be submitted to the Court of Session for consideration.

Policy Objectives

3. The rules introduce new procedures and amend existing procedures. They implement recommendations in chapters 2 to 4 of *Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland*¹. They provide for a timescale of four months in sheriff court ordinary causes and Sheriff Appeal Court actions from the date of final judgement for the lodging of accounts for taxation; and for the payment of interest on expenses when an account is lodged for taxation. They also provide updated provisions regarding the procedure to be followed where a party challenges decisions taken by the Auditor. They amend Court of Session procedures to allow a party to apply to the court for an extension of the period allowed for the lodging of an account of expenses before that period has expired. The rules also include various amendments and revocations consequential to the coming into force of the *Act of Sederunt (Taxation of Judicial Expenses Rules) 2019* (S.S.I. 2019/75). Further details are provided in the Explanatory Note to the Act of Sederunt.
4. In developing the rules, efforts have been made to achieve greater consistency of practice between courts and to modernise and simplify the language.

¹ Report of the Review of Expenses and Funding of Civil Litigation in Scotland, 2013