



Scottish  
Civil Justice  
Council

## **BUSINESS & REGULATORY IMPACT ASSESSMENT:**

### PROVIDING AMENDED COURT RULES TO SUPPORT: **Online Intimation**

PREPARED BY: The Secretariat to the Scottish Civil Justice Council (SCJC)

REGARDING: the impacts of the proposed rule changes that will confirm the use of 'online intimation' as the permanent court procedure

LAST UPDATED: **31 October 2024**

#### Step 1 – POLICY BACKGROUND

### **Purpose and intended effect**

#### Background

Where the court does decide the "intimation" of proceedings is to include advertising then the updated policy position is for the relevant abbreviated notices to be advertised online.

The three proposed changes are:

- *Proposal 1* - To amend the rules so that 'online intimation' replaces previous references to "the walls of court" when the court instructs such advertising to take place;
- *Proposal 2* - To amend the rules so that when newspaper advertising is instructed it will be a discretionary decision rather than mandatory; and
- *Proposal 3* - Subject to a change in the law; to shift the notification of any potential Executor Dative appointment to 'direct intimation' (*in due course*).

#### Rationale for this intervention

The digital solution introduced during the pandemic has already modernised the courts and these rule changes will permanently retain those benefits.

### **Consultation Method**

As advertising costs are passed on to the pursuer; a Public Consultation process will enable the Council to consider a wide range of views before taking a final decision.

## **Sectors and groups affected**

*Pursuers – whereabouts unknown* - will be signposted to the online intimation service, and in particular the public notices webpage.

*Petitioners - petitions procedure* – will be signposted to the Court of Session process for completing walling slips which are then used to update the rolls of court.

*Petitioners – insolvency procedure* - will be signposted to the online intimation service, and in particular the public notices webpage.

*Petitioners - executor dative* – will be signposted to the online intimation service, and in particular the public notices webpage. Longer term those petitioners will be redirected to using a procedure based on providing ‘direct intimation’.

*Pursuers – other appointments* - will be signposted to the online intimation service, and in particular the public notices webpage.

## **Options**

### Do Nothing

If no rule change are made - the courts would need to revert to using the physical walls of court when the 2022 Act expires on 30 November 2025.

### Amended Rules

The initial rule changes to support ‘online intimation’ means:

- All notices will be made available for viewing on the existing webpages; and
- The rules requiring advertising via the walls of court, or the mandatory use of newspapers, will be withdrawn.

The longer term rule change to shift Executor Dative notices to ‘direct intimation’ means:

- The petitioner will need to directly intimate their own appointment; and
- The online intimation of those notices via the SCTS website will cease.

## **Benefits**

### Benefits - Do Nothing

Nil

### Benefits - Amended Rules

*Modernising the courts* – the availability of the existing digital service has already contributed to the modernisation of the courts, and these rule changes will lock in that digital gain.

*Future proofing the rules* – all of the publications made regarding the new Ordinary Procedure Rules already anticipate the withdrawal of the walls of court.

*Improved data protection* – by limiting the disclosure of personal data to just those who would have a valid interest in a deceased person’s estate.

## **Costs**

### Do Nothing

*Additional Staff Time* – reverting to physically putting notices up on noticeboards in courthouses would take more staff time than uploading notices to the SCTS website.

### Amended Rules

*Technology Costs (for online intimation)* – the sunk costs of the existing digital solution have already been met. No new IT investment arises as a consequence these rule changes.

*Reduced Staff Time (for online intimation)* – uploading notices to the SCTS website will take less time than putting notices up on noticeboards. That saving has already been banked to offset the sunk costs of developing the current digital solution.

The costs when implementing the subsequent change to ‘direct intimation’:

*Technology costs* – a small sum may be required to update the court registration screens to support case tracking of Executor Dative petitions;

*Added Costs for Petitioners* – the added costs will be nil where recipients are willing to accept intimation by electronic means. Otherwise this change will put some costs back onto petitioners: if using personal service, recorded delivery or postal service.

*Court Fees* – in theory some people might not take out a caveat. In practice no material drop in caveat volumes is expected as the appointment of an executor is only one of the multiple risks to be guarded against if an estate may be contested.

*Increased staff time* – for applications for appointment as an Executor Dative; the shift to direct intimation will increase the volume of *certificates of service* to be checked by court staff, along with the volumes of *undelivered mail* that may be returned to the courts.

## **Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS**

### What feedback has arisen from business engagement?

The digital service for ‘online intimation’ has been in place since 2020, and is operating as intended. Given the increasing levels of digitisation the legal profession has indicated a preference for retaining that service.

### How has that feedback fed into the development of this proposal?

Consulting on this proposed change to permanent rules will test and confirm that retaining “online intimation” is still the preferred option in an increasingly digital world.

### Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

To support initial screening for competition impacts, the Council uses the checklist of four questions recommended<sup>1</sup> by the Competition and Markets Authority (CMA):

Will the measure directly or indirectly limit the number or range of suppliers?

NO

Will the measure limit the ability of suppliers to compete?

NO

Will the measure limit suppliers' incentives to compete vigorously?

NO

Will the measure limit the choices and information available to consumers?

NO

### Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

To support initial screening for consumer impacts, the Council mirrors the best practice<sup>2</sup> guidance from Scottish Government which uses the following six questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

NO

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO – the data being held in the case file remains the same.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

NO

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<sup>1</sup> [Competition impact assessment: part 1 overview \(Sep 2015, CMA\)](#)

<sup>2</sup> [BRIA Guidance \(Oct 2015, SG\)](#)

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

YES – if a failure to advertise an abbreviated notice did arise, then any consumer complaint is signposted to the mailbox shown on the SCTS website.

### **Test run of business forms**

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO - further user testing is not required. The Court of Session walling slips have now been in use for several years, as has the procedures for online intimation via the SCTS website.

## Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

### **Digital Impact Test**

Public services are increasingly being delivered online. To test for relevant opportunities the Council mirrors the best practice<sup>3</sup> guidance from Scottish Government and uses the following five questions:

Does the measure take account of changing digital technologies and markets?

YES – the digital service for publishing online notices have been in place since 2020 and will continue to evolve.

Will the measure be applicable in a digital/online context?

YES – the processes for publishing intimations online have been in place since 2020, and they are working as intended.

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

Alternatively will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

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<sup>3</sup> [BRIA Guidance \(Oct 2015, SG\)](#)

## Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

### Court Fees

Will the proposal require changes in *court fee* regulations?

NO – for online intimation

NO – for direct intimation (*of Executor Dative appointments*):

- *Commissary proceedings* – the upfront fee for a commissary proceeding (inclusive of the extract) is a flat £20, and the bulk of costs recovery comes through the additional fees derived by reference to the value of the estate. The proposed change to direct intimation will be covered within that existing fee structure.
- *Caveat fees* - there should be no material change in the volume of caveat fees. People do still need to cover the multiple risks that could lead to an estate being contested and the potential appointment of an unsuitable *Executor Dative* is but one of those risks.

### Legal Aid

Will the proposal require changes in *legal aid* regulations?

NO

### Recovery of Costs Awarded

Will the proposal require changes in *judicial taxation* regulations?

NO

### Enforcement and/or sanctions

Will compliance be enforced, and if so how?

NO

Are there sanctions for non-compliance?

YES – if there is a failure in service or intimation, the pursuer is unable to progress their civil proceedings until that is rectified.

## Step 7 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

### Implementation Plan

What is the likely timescale for this proposal be implemented?

Estimated at 11 months from the opening date of this consultation:

- 3 months – for the public consultation;
- 1 months - for the consultation analysis;
- 3 months - to prepare the draft instrument;
- 1 months – to seek approval of the draft instrument by the Council;
- 1 months – for the rules to be considered and approved by the Court of Session; and
- 2 months – to provide a familiarisation period for court users.

The latest date for commencement is - 30 November 2025

How will this proposal be implemented?

The amended rules will be enacted by Act of Sederunt and take legal effect from the commencement date fixed within that instrument.

## **Monitoring**

Will the resultant changes be monitored, and if so how?

YES:

- Qualitative Monitoring – for user feedback on the amended rules in use.
- Quantitative Monitoring – of the volume of notices that are being advertised online

Will the resultant changes be evaluated, and if so how?

NO – online intimation has been well received since lockdown so the change to permanent rules is unlikely to require further evaluation.

Will a post implementation review need to be undertaken, and if so when?

NO – unless there was evident user dissatisfaction with the amended rules.