

Consultation Response

Online Intimation - to replace the walls of court

April 2025



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Civil Justice Committee and Trust and Succession Law Sub-Committee welcome the opportunity to consider and respond to the Scottish Civil Justice Council Consultation: Online Intimation - to replace the walls of court. The committees have the following comments to put forward for consideration.

Proposal 1 - Online Intimation:

Question 1 – Do you agree the existing rules on “advertising via the walls of court” should be replaced by amended rules requiring “online intimation”?

The Civil Justice Committee have no objections to the rules on advertising via the walls of court being replaced by amended rules requiring online intimation. It should be noted that there should be a method of online intimation which facilitates intimation to companies with no current or registered address, e.g. companies in the process of being restored to the register. Currently such intimation would be made via the walls of court.

Question 2 – Are you aware of any reason why those existing references to “advertising via the walls of court” should not be removed?

The Civil Justice Committee is not aware of any reason why those existing references to “advertising via the walls of court” should not be removed.

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Proposal 2 - Newspaper Advertising:

Question 3 – Other than notices for publication in the Edinburgh Gazette; are you aware of any reason why the existing references to the mandatory use of “advertising via newspapers” should not be made discretionary?

The Civil Justice Committee agreed that advertising should be discretionary but would anticipate that there would be appropriate judicial scrutiny of such discretion being exercised. The Civil Justice Committee raised the example of petitions in relation to schemes of arrangement, where advertisement in the international press still serves an important purpose. If the discretion to seek an order for advertisement was to be exercised by the petitioner alone this could lead to situations where petitioners avoid advertising overseas and overseas creditors are unaware of a scheme of arrangement as they do not look at the relevant court website or the Edinburgh Gazette.

Proposal 3 - Direct Intimation:

Question 4 – Subject to securing a prerequisite law change; when potential appointments as an Executor Dative are being advertised do you agree that ‘direct intimation’ would be more appropriate?

The Civil Justice Committee and Trust and Succession Law Sub-Committee are of the view that the process with regard to Executive Datives should be modernised however, before they could comment more fully on whether ‘direct intimation’ would be more appropriate, they would require more information on the following points:

- Would online intimation cover beneficiaries abroad or would another particular process be required? This could have cost implications.
- Would intimation be required to a potential claimant under Section 29 of the Family Law (Scotland) Act 2006? If so, how would this work in practice if there is ambiguity as to whether a person would be considered a cohabitee?

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- How would the process operate if you do not know who the beneficiaries are at the point of the appointment?
- What would be the implications of failing to intimate properly?

Business and Regulatory Impact assessment (BRIA); Data Protection Impact Assessment (DPIA); and Equality Impact Assessment (EQIA):

Question 5 – For the Impact Assessments provided; do you have any views on the impacts that have been narrated or any other impacts the Council should consider?

The Civil Justice Committee have no comments on this.

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