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**Scottish
Civil Justice
Council**

THE ‘CONSULTATION PROCESS’ USED BY THE SCJC

Version 2.0

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CONTENTS

	<u>Page</u>
Introduction	3
Stage 1 – Plan the consultation	5
Stage 2 – Research the consultation	9
Stage 3 – Approve the consultation	12
Stage 4 – Open the consultation	12
Stage 5 – Close the consultation	14
Stage 6 – Analyse the consultation	16
Stage 7 – Report on the decisions taken	18
Keeping the consultation process under review	18
 <i>Bibliography</i>	 19

VERSION CONTROL:

Version	Date	Comment
V1.0	15 January 2024	As circulated to Council members for the SCJC meeting on 22 Jan 2024
V1.1	31 January 2024	Updated to reflect members feedback (per minutes from 22 Jan 2024)
V2.0	08 August 2025	Updated to include the 11 Consultation Principles of the Cabinet Office, the statutory guidance on environmental principles under the Continuity Act & the duty to support public participation.

INTRODUCTION

Purpose

1. To provide a procedural narrative for the way in which the Council seeks external feedback when establishing new rules, or changing existing rules.

Background

2. As an independent judicially led public body the Councils statutory functions include the need to consult such persons as it considers appropriate on proposed changes; so that it can finalise draft rules for consideration, approval and enactment by the Court of Session. For the purposes of this paper ‘consultation’ means:

“A time-limited exercise that provides an opportunity for all those who wish to express their opinions on a proposed area of work to do so in a way that can inform and enhance that work.”

3. The statutory power to consult arises under section 3 (2) (c) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ([ASP 2013/3](#)):

Section 3 (Powers of the Council)

(1) The Council may take such action as it considers necessary or desirable in pursuance of its functions.

*(2) In particular, the Council **may**:*

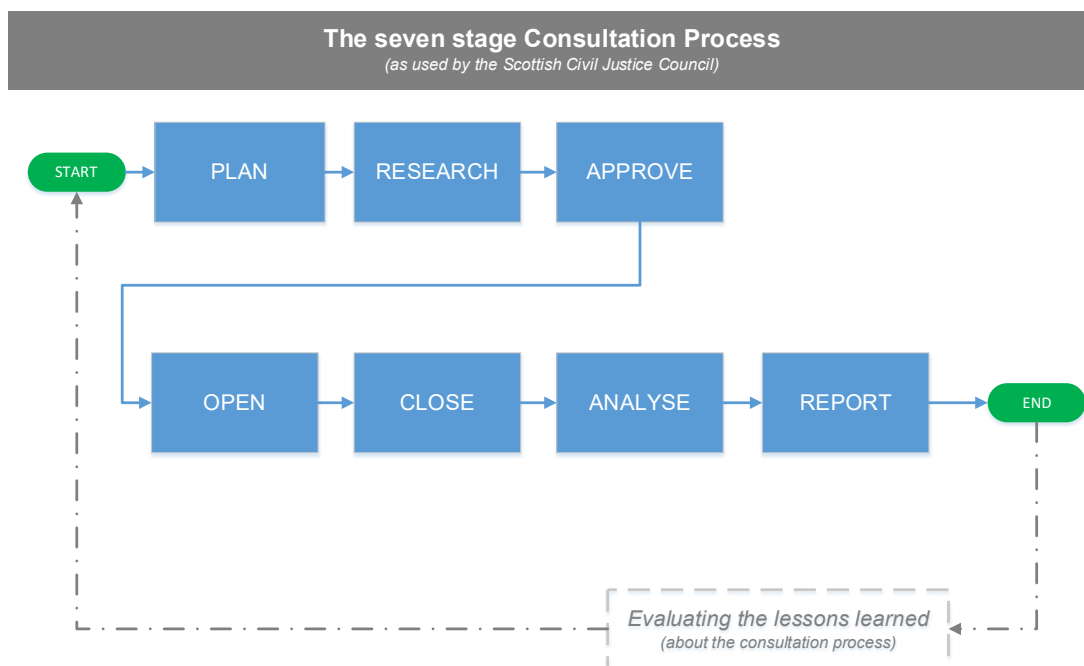
- (a) have regard to proposals for legislative reform which may affect the civil justice system,*
- (b) have regard to the criminal justice system and its effects on the civil justice system,*
- (c) consult such persons as it considers appropriate,***
- (d) co-operate with, and seek the assistance and advice of, such persons as it considers appropriate,*
- (e) make proposals for research into the civil justice system,*
- (f) provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system, and*
- (g) publish any recommendation it makes.*

4. When running any consultation the desired outcomes are:
 - To secure quality feedback from respondents that can inform the development of well-considered policy positions;
 - To enable the Council to take account of any concerns raised or any unintended consequences that may arise; and
 - To strengthen public support for implementation of the proposed changes.

Running a fair consultation:

5. Running any consultation exercise is a time and resource intensive process which can place a considerable burden on both the Council and all those who do choose to respond. To have due regard to the level of effort that respondents will put into preparing a well-informed response the aim is to:
 - Ensure fairness is built into the consultation process itself; and

- Facilitate outcomes that add real value; by receiving constructive feedback that can influence the decisions taken.
6. Every consultation will carry the risk of legal challenge if the process used was to be perceived as unfair. In domestic law fairness would be determined by comparison to the Gunning Principles which are:
 - Consult when proposals are at a formative stage, and before final decisions are made;
 - Provide enough information for intelligent consideration and the provision of a meaningful response;
 - Allow sufficient time for respondents to consider the proposals made and provide their feedback; and
 - Conscientiously take the consultation responses into account when making the final decision.
 7. To complement those 4 Gunning Principles, the UK Cabinet Office subsequently added a statement in 2018 to convey the 11 [consultation principles](#) that must be applied in practice by all public authorities across the UK:
 - Consultations should be clear and concise;
 - Consultations should have a purpose;
 - Consultations should be informative;
 - Consultations are only part of a process of engagement;
 - Consultations should last for a proportionate amount of time;
 - Consultations should be targeted;
 - Consultations should take account of the groups being consulted;
 - Consultations should be agreed before publication;
 - Consultations should facilitate scrutiny;
 - Responses to consultations should be published in a timely fashion; and
 - Consultation exercises should avoid election periods.
 8. To deliver on each of those consultation principles; this paper narrates the seven-stage consultation process that is used to provide an SCJC specific approach:



9. The most visible outcomes from using that process can be seen in the 3 reports that would routinely be published with any public consultation:
- The CONSULTATION paper;
 - The CONSULTATION ANALYSIS paper; and
 - The CONSULTATION RESPONSE paper.

STAGE 1 – PLAN THE CONSULTATION

Consultations are only part of a process of engagement

- *Consider whether informal iterative consultation is appropriate, using new digital tools and open, collaborative approaches.*
- *Consultation is not just about formal documents and responses. It is an on-going process.*

(Source – UK Cabinet Office - Consultation Principles 2018 - principle D)

10. The principle is that:
- The views of end users will be of greatest use when they are sought as early as possible in the policy development cycle.
11. Before starting any consultation there is a need to consider:
- Why the Council needs to consult;
 - Whose views need to be sought to help inform the policy area in question;
 - Whether there may be any legal barriers to a proposed rule;
 - Whether there may be any unintended consequences from a proposed rule;
 - What new perspective can respondents bring to what is already known; and
 - Whether it is appropriate to put respondents through the burden of a public consultation if a firm policy position has already been reached.

Deciding “not to consult”

12. Where the proposed changes are a logical consequence of public participation in an earlier consultation by the Council or another public body there is a need to consider whether ‘consulting again’ would add value to the policy decisions to be made; or unnecessarily duplicate the efforts of potential respondents that have already made their views known. That question frequently arises when a consultation has already been undertaken by another public body such as:
- The consultations on law reform run by the Scottish Law Commission;
 - The consultations run by the Scottish Government before it tables a draft bill for scrutiny by the Scottish Parliament; and
 - The consultations run by the UK Government before tabling a draft bill for scrutiny by the UK Parliament.
13. In addition the Council may decide not to consult where a required rule change has arisen as a direct consequence of a judgment issued by the court.

Deciding “to consult again”

14. Where a previous consultation or other engagement exercise has met the public participation requirement, it is not always necessary to consult again on the draft rules needed to implement those changes. It becomes necessary where a material change that had not previously been consulted on is included.
 15. Where a decision is made to consult again on the same policy area then:
 - The list of consultees should include relevant respondents to any previous consultation exercise; and
 - If appropriate the parties from relevant case precedent.
-

Identifying the category of consultation

16. Consultations on proposed rule changes usually fall into 1 of 3 categories:
 - *TECHNICAL CONSULTATIONS* – seek feedback from those legal professionals and officials who have a high level of understanding of the specific issue being consulted on; as their understanding of the complexity of the legal language used can be essential to ensure the amended rules will deliver legal certainty. By way of comparison, many members of the general public will find it difficult to meaningfully respond to a high level of legal complexity.
 - *GENERAL CONSULTATIONS* – seek feedback from a wider target audience of people with a general interest in a policy topic but varying degrees of expertise in offering comment. The use of straightforward terminology is essential. Where possible, complex legal language should be relegated to the accompanying draft rules where the audience is more specifically the judiciary, legal practitioners and officials.
 - *MASS CONSULTATIONS* – seek feedback on a general area of policy that effects civil society as a whole; as a precursor to initiating the development of draft rules. That differential in approach allows legal professionals and officials to respond, as well as members of the public including those with no former involvement in the policymaking process. Such mass consultations must be worded in plain English, the policy aims must be clear, and the consultation paper itself must be worded as succinctly as possible.
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Choosing the right channel for consulting

17. Depending on the nature of a proposed change, and the target audience, there is a choice to be made on the right channel to use when consulting:
 - *THE INTERNAL CONSULTATION CHANNEL (via Committee members)* – the majority of proposed rule changes are by their nature Technical Consultations and the broad range of members on the Council and its Committees does provide an established channel for engagement; particularly when the feedback sought is highly technical or consequential in nature. For information handling; the decisions taken are recorded within the publicly available minutes of that Committee meeting.

- **THE TARGETED CONSULTATION CHANNEL** (*via selected stakeholders*) – where the views sought are specific to one area of specialist expertise the Council may wish to access the lived experience of a greater number of the judiciary, practitioners and officials than can be accessed through members of the Council and its Committees. For information handling: the papers under consideration would be uploaded to the Councils website for transparency; and the listed consultees emailed directly. The decision on whether to issue an accompanying press release is a matter for the secretariats discretion.
- **THE PUBLIC CONSULTATION CHANNEL** (*covers all potential stakeholders*) – a policy topic will generate a much wider level of public interest where it affects civil society as a whole and the list of potential consultees should reflect that. For information handling; the Council publishes the consultation paper, the individual responses, and the analysis of responses. Accompanying press releases are used to attract the widest possible interest.

Choosing what is to be consulted on

Consultations should have a purpose

- Do not consult for the sake of it.
- Ask departmental lawyers whether you have a legal duty to consult.
- Take consultation responses into account when taking policy forward.
- Consult about policies or implementation plans when the development of the policies or plans is at a formative stage.
- Do not ask questions about issues on which you already have a final view

(Source – UK Cabinet Office - Consultation Principles 2018 - principle **B**)

18. The choices made around WHAT should be consulted on do influence WHEN that consultation should take place within the policy cycle:

CONSULT EARLY ON THE SUGGESTED POLICY POSITIONS – seeking early feedback on the suggested policy positions can help the Council to define more settled policy positions: prior to instructing the preparation of draft rules to implement those positions.

CONSULT LATER ON THE AGREED POLICY AND THE DRAFT RULES – preparing draft rules first and then seeking feedback on their workability can better support implementation. The downside is the time for drafting can delay external views being sought; and the ability to influence the overall direction of travel can be lower by that point in the policy cycle.

Choosing who to consult directly

Consultations should be targeted

- Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist.
- Consider targeting specific groups if appropriate.
- Ensure they are aware of the consultation and can access it.
- Consider how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle **F**)

19. Section 1 of each consultation paper includes a section covering “who we are consulting with?” and that tailored list will reflect the target audience most likely to provide feedback on the particular change being consulted on.

20. To attract respondents in general a press release is issued when a Public Consultation is published, with PDF copies of the consultation papers emailed to the generic email boxes used by the organisations listed in section 1 of each consultation paper.

Choosing the duration

Consultations should last for a proportionate amount of time

- *Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal.*
- *Consulting for too long will unnecessarily delay policy development. -*
- *Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.*

(Source – UK Cabinet Office - Consultation Principles 2018 - principle E)

21. *Normally* – a consultation is set to run for a 12 week duration as key justice partners, NGO's and other stakeholders have previously made it clear that they require sufficient time to work through their own internal meeting structures in order to provide an informed and considered view.
22. *By exception* - if there is a need for urgency, or the proposed changes are relatively straightforward the Council may set a shorter time frame.

Securing the resources

23. A small number of public consultations can be prepared and run each year within the secretariats existing level of resources.
24. By exception, the Council may seek additional funding in order to bolster the secretariats resources or to outsource the detailed analysis of responses due to: a high volume of responses being received, or the legal complexity of the proposed change; or where having an independent perspective provided might assist public acceptance of the proposed change.

Avoiding joint consultations

25. The question of running a joint consultation with the Scottish Government or another public body does occasionally arise. As that could lead to a perception that the Council was not operating at arms-length from the Scottish Government that option would be rejected.

STAGE 2 – RESEARCH THE CONSULTATION

Consultations should be informative

- Give enough information to ensure that those consulted understand the issues and can give informed responses.
- Include validated impact assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle C)

26. The principle is:

- To provide sufficient information to support intelligent consideration by respondents.

27. The target audience that is being consulted should be able to quickly understand the policy issues arising from the content within the consultation paper; and then give an informed response without having to invest a disproportionate amount of their own time.

28. In practice the supporting papers for any consultation should be:

- Written concisely in plain English so that they are easy to understand; and
- Kept to a reasonable length, so that the time for “reading in” is not disproportionate.

Impact assessments

29. The selection of the most appropriate impact assessments to accompany any given consultation is a matter for the Council to consider:

- Business and Regulatory Impact Assessment (BRIA).
- Childs Rights and Wellbeing Impact Assessments (CRWIA).
- Data Protection Impact Assessments (DPIA).
- Equalities Impact Assessment (EQIA).
- Island Communities Impact Assessments (ICIA).
- Human Rights Impact Assessments (HRIA).

30. The subsequent preparation of those assessments is a matter for the secretariats discretion:

- *Where policy is at an early stage* - the consultation itself may be seeking the further information required to assess any likely impacts.
- *Where policy is at a later stage* – publication of effective impact assessments can help to minimise the potential burden on respondents; by avoiding the need to comment unnecessarily on matters already under consideration.

Having “due regard” for the environmental principles

31. The Council must give ‘due regard’ to the *Guiding Principles on the Environment*¹ as issued by the Scottish Government in August 2023.
32. That guidance expanded on the 5 statutory principles for protecting the environment that have been set out post Brexit in section 15 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021²:
- *The integration principle* – is that **protecting the environment should be integrated into the making of policies by all public bodies**;
 - *The precautionary principle* - is that where there are threats to the environment then a lack of certainty should not be used as a reason for postponing cost effective measures that could prevent the environment being harmed;
 - *The preventative principle* – is that preventative action should be taken to stop environmental damage before it happens;
 - *The rectification at source principle* – is that when environmental damage does happen it should as a priority be rectified at source;
 - *The polluter pays principle* – is that it is considered appropriate for those responsible for an environmental harm to be held accountable for the costs of rectification, rather than having those costs externalised and borne by society in general.
33. Where a proposed change will have an impact on the environment then the Consultation Paper is to include:
- An assessment of any “significant effects” on the environment from the proposed change, the opportunities to avoid or reduce any adverse effects and the opportunities to enhance any positive effects; or
 - An assessment of why the proposed change falls below that threshold and would be characterised as only having a “moderate effect” or a “minimal effect” or an “indirect effect” or “no effect” on the environment.
34. As the Council does not prepare programmes and plans related to the environment it is not regarded as a ‘responsible authority’ under the Environmental Assessment (Scotland) Act 2005. Hence the Council is not expected to prepare the *Strategic Environmental Assessments (SEA)* or the *Environmental Impact Assessments (EIA)* required of other public bodies.

Compliance with the duty to promote public participation

35. In terms of promoting public participation in general, across all areas of law, then under domestic law the Gunning Principles apply:

¹ <https://www.gov.scot/publications/scotlands-guiding-principles-environment-statutory-guidance/documents/>

² <https://www.legislation.gov.uk/asp/2021/4/contents>

- Consult when proposals are at a formative stage, and before final decisions are made;
- Provide enough information for intelligent consideration and the provision of a meaningful response;
- Allow sufficient time for respondents to consider the proposals made and provide their feedback; and
- Conscientiously take the consultation responses into account when making the final decision.

36. Where a set of draft rules would have a “significant effect” on the environment then, under international jurisprudence, the Council must “strive” to promote public participation in its decision making under the Aarhus Convention:

Article 8: Public Participation during the preparation of executive regulations and/or generally applicable legally binding normative agreements:

*Each Party **shall strive to promote effective public participation** at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules **that may have a significant effect on the environment**.*

To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;*
- (b) Draft rules should be published or otherwise made publicly available; and*
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.*

The result of the public participation shall be taken into account as far as possible

Choosing the right questions

Consultations should be clear and concise

- Use plain English and avoid acronyms.
- Be clear what questions you are asking and limit the number of questions to those that are necessary.
- Make them easy to understand and easy to answer.
- Avoid lengthy documents when possible and consider merging those on related topics.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle A)

37. Well-structured questions that do ask the right questions in the right way and clearly reflect the scope of a consultation will focus respondents on the specific areas most likely to inform the policy decisions to be taken; and simplify the workload involved in analysing the responses received.

38. The principles are:

- When using closed questions respondents should be asked for reasons; and
- The careful use of open questions can help to ensure that respondents do not go too far off topic.

39. The question of whether to include an open question seeking “any other comments” is a matter for consideration and decision by the Council; as adding such questions can extend a consultation well beyond its original intended

scope, delay the subsequent analysis of responses, add delay to the implementation of the key proposed changes and cause frustration for many.

STAGE 3 – APPROVE THE CONSULTATION

Consultations should be agreed before publication

- Seek collective agreement before publishing a written consultation, particularly when consulting on new policy proposals.
- Consultations should be published.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle H)

40. The principle that applies is:

- To provide a 'reasonableness check' for any unfairness within a consultation exercise the secretariat will prepare appropriate papers for the members of the Council (*or a Committee*) to approve via either a formal meeting, or by correspondence.

41. The members of the Council (*or a Committee*) will be asked to:

- Consider and agree that the proposed method of consultation is fair;
- Confirm the consultation questions asked, are appropriate given the stated policy objectives for that change and the scope set for that consultation; and
- Confirm that the range and content of the supporting papers is appropriate.

42. Whilst the Council is an independent public body; as a matter of good practice the Scottish Ministers may be asked to clear any comments that may overlap with statements of Government Policy or that may impact on the planned timings for the commencement of regulations etc.

STAGE 4 – OPEN THE CONSULTATION

43. The principles are:

- To clearly communicate the policy objectives to the target audience; and
- To provide sufficient time for people to provide a considered response.

44. For a consultation paper issued by the SCJC the standard format used is:

Sections	Heading	Content
Section 1	Responding to this Consultation	How will your response will be handled? Why run a Public Consultation? Who are we consulting with? Comments and complaints
Section 2	Executive Summary	Purpose Background The policy objectives The proposed changes (<i>in summary</i>)
Section 3	General Background	What happens at present The proposed changes (<i>in detail</i>)
Section 4	Consultation Questions	Question 1, 2, 3 etc.
Section 5	Next Steps	Publication of – the individual responses

		Publication of – the consultation analysis paper Publication of – the consultation responses paper Proposal of draft rules to the Court of Session Enactment of finalised rules by the Court of Session Commencement of the agreed rule changes
	Bibliography	
	Glossary	
	Annexes	

45. The secretariat will:

- Identify the target audience and prepare a list of planned consultees for inclusion in section 1 of each consultation paper;
- Decide on a reasonable duration;
- Specify the opening date and closing date;
- Supply a Respondent Information Form (RIF) to support the publication of responses and enable the effective analysis of those responses;
- Prepare an accompanying news release (*where appropriate*);
- Publish the consultation and its supporting papers online;
- Redirect anyone seeking an individualised response;
- Consider how to capture any missing voices; and
- Monitor for any views expressed external to the process e.g. media coverage.

Consultation exercises should not generally be launched during local or national election periods.

- If exceptional circumstances make a consultation absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office.
- This document does not have legal force and is subject to statutory and other legal requirements

(Source – UK Cabinet Office - Consultation Principles 2018 - principle K)

46. Where a statutory instrument does need to be progressed over a period where the Scottish Parliament is in recess; additional time will be factored in between the “date made” and the “commencement date” to support parliamentary scrutiny.

Initiating a consultation

47. The modes of initiation may include:

Type of consultation	Initiate by
Internal Consultation - via members	Tabling a paper at a Council or Committee meeting Circulating a paper by correspondence
Targeted Consultation - via specific stakeholders	Emailing the targeted stakeholders Uploading the papers to the website
Public Consultation	Issuing a news release to the general public Uploading the papers to the website Emailing the listed consultees

48. The introductory section 1 of each Consultation Paper will:

- Indicate that the consultation is open for 12 weeks (*or other duration by exception*);

- Specify the closing date set for receiving written responses;
- Direct consultees to send their responses by email to the generic SCJC mailbox at scjc@scotcourts.gov.uk along with their completed Respondent Information Form;
- Convey standard statements on “how your response will be handled” with regard to both the permissions required for sharing and the handling of any FOI requests received;
- Narrate the reasons why a particular mode of consultation was chosen;
- Indicate who is being consulted; and
- Invite feedback from anyone that may hold a view on the content of the consultation, or how that consultation is being run.

49. Other engagement mechanisms may be considered with some consultations:

- The use of roadshows / workshops / focus groups;
- The use of questionnaires / surveys;
- The use of meetings with representative bodies; and
- The use of calls for information.

Extending the Duration of a Consultation

Consultations should take account of the groups being consulted

- Consult stakeholders in a way that suits them.
- Charities may need more time to respond than businesses, for example.
- When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline beyond the holiday period.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle G)

50. Where a potential respondent makes a reasonable request for more time during a consultation that extension will normally be granted by the secretariat as a matter of routine (*in order to secure the widest possible feedback*).

51. When running a time critical consultation there may not be sufficient time to accept late responses. If so a warning to that effect should ideally have been included within the consultation paper when issued.

52. It is a matter for the secretariats discretion to either:

- Accept or reject individual requests for a late submission; or
- Issue a general extension to the closing date for all respondents.

STAGE 5 – CLOSE THE CONSULTATION

53. The principles are:

- To receive and track the individual responses accurately.

54. Given that consultations run on the establishment or refinement of procedural rules can often be a somewhat dry subject; the working assumption is that most consultations may only generate around 5 to 10 responses.

Logging the Responses

55. On receipt of each emailed response, the secretariat will:
- Open a consultation sub folder;
 - Number, log and file each valid response received;
 - Identify the category of response;
 - Identify the permissions from the Respondent Information Form (RIF); and
 - Scan for offensive language, defamatory content, or data protection issues.
56. Some respondents may use campaign style responses in order to influence the qualitative analysis of responses. Such responses will have a flag added when logged, in order to reflect the added potential for bias. A decision on whether to include or exclude campaign responses within the counts used is a matter for the secretariats discretion
57. Some respondents may seek individualised responses. That would be a misuse of the consultation process. Individualised responses will not be made.

Categorising the Responses

58. The principle is:
- To use standard descriptors where practicable; to support the nature of the responses received being assessed across multiple consultations
59. Those standard descriptors are:

STANDARD DESCRIPTOR	Notes	RESPONSES FROM ORGANISATIONS and REPRESENTATIONAL BODIES	RESPONSES FROM INDIVIDUALS
Judiciary		Senators of the College of Justice Sheriffs Principal Sheriffs and Summary Sheriffs Association	judge sheriff
Practitioners	1 2	Faculty of Advocates Law Society of Scotland Society of Solicitor Advocates Scottish Law Agents Society Other representative bodies Firms of solicitors Firms of advocates	advocate solicitor
Officials	3	Scottish Courts and Tribunals Service (SCTS) Scottish Legal Aid Board (SLAB) Officials within the Scottish Government Officials within Local Authorities other service providers user groups	court officials officials

Organisations	4	local authorities advice providers consumer bodies other public bodies non-governmental organisations (NGOs) academics media	
Other		General public	individual

Notes:

1. **ADVOCATES** – includes advocates chambers, as well as the representative bodies for advocates.
2. **SOLICITORS** - includes firms or groups of solicitors, as well as the representative bodies for solicitors.
3. **GOVERNMENT** – the government undertakes its own consultations on the policy positions of the Scottish Ministers, so the Council would not normally expect to receive formal responses from the government. The views of government lawyers commenting as practitioners would be counted under the 'Officials within the Scottish Government' category.
4. **LOCAL AUTHORITY** - the 'local authority' category only applies if a response reflects policy positions agreed by a Local Authority. The views of officials within a local authority would be counted under the 'Official's within Local Authorities' category.

Publication of the Responses

Consultation should facilitate scrutiny

- Publish any response on the same web page as the original consultation, and ensure it is clear when the... has responded to the consultation.
- Explain the responses that have been received from consultees and how these have informed the policy.
- State how many responses have been received.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle I)

60. For Public Consultations the secretariat will:

- Upload moderated responses to the main SCJC website (*in line with the permissions given within each Respondent Information Form (RIF)*); and
- Upload confidential responses to the member's area of the SCJC website (*to enable all respondent views to be taken into account by Council members*).

61. Individual responses will ideally be uploaded **within 4 weeks** from closing.

STAGE 6 – ANALYSE THE CONSULTATION

62. The principles are:

- To analyse feedback in a neutral and balanced manner, so that respondents can see how their feedback has been taken into account; and
- To summarise the key points made so that that the analysis provided does usefully inform the policy development process.

63. For a Consultation Analysis report prepared by the SCJC the usual format is:

Sections	Heading	Content
Section 1	Introduction	Purpose Why was this consultation undertaken? Opening dates and closing dates Count of responses received

Section 2	Responses to the consultation questions	Summary of responses to question 1 Summary of responses to question 2 Summary of responses to question 3 etc.
Section 3	Conclusions	Conclusions reached (regarding the feedback received)
Section 4	Next Steps	Publication of – the Consultation Response paper Proposal of draft rules to the Court of Session Enactment of finalised rules by the Court of Session Commencement of the agreed rule changes
	<i>Bibliography</i>	
	<i>Glossary</i>	
	<i>Annexes</i>	

64. The content of that Consultation Analysis report must demonstrate that the feedback received from respondents has been considered seriously. That said, the Council is not obliged to accept all of the comments, reservations or opinions submitted; particularly those that are in direct conflict with each other.

The potential for bias

65. Within any consultation exercise there is a strong potential for bias as respondents are self-selecting whether they wish to respond or not; which can often result in strong and often polarised views in the responses received. Those polarised views will not necessarily be representative of the views held by civil society in general.

Resourcing the analysis of responses

66. The principle is:
- To provide an independent, neutral, fair and balanced analysis of the external feedback received.
67. The standard practice will be for the secretariat to undertake the analysis of consultation responses. By exception the Council may choose to outsource the analysis of responses:
- *To a subject matter expert* - where the subject matter requires specialist legal expertise that is not available within the secretariat; or
 - *To an independent research consultancy* – where a significant volume of responses is received, or when having their independent view may assist with the subsequent implementation of the proposals made.
68. When deciding to outsource the analysis: the procurement process and confirmation of the funding will extend the timetable required.
69. A decision on whether to upload any external analysis to the SCJC website as soon as it is made available, or to circulate it to Council for awareness prior to uploading, is a matter for the secretariats discretion.

STAGE 7 – REPORT ON THE DECISIONS TAKEN

Responses to consultations should be published in a timely fashion

- Publish responses within 12 weeks of the consultation or provide an explanation why this is not possible.
- Where consultation concerns a statutory instrument publish responses before or at the same time as the instrument is laid, except in very exceptional circumstances (and even then publish responses as soon as possible).
- Allow appropriate time between closing the consultation and implementing policy or legislation.

(Source – UK Cabinet Office - Consultation Principles 2018 - principle J)

70. The principle is:

- Respondents will expect to see if and how their views were taken into account by the Council when taking its final decisions.

71. To support transparency and accountability:

- *The individual responses* – will be uploaded to the consultations page of the SCJC website in line with the permissions given, ideally **within 2 weeks** of closing;
- *The Consultation Analysis report* – will be uploaded to the consultations page of the SCJC website to set out each of the questions posed by the Council and a summary of how people chose to respond, ideally **within 6 weeks** of closing; and
- *The Consultation Response report* – following consideration by the Council the Consultation Response report will be uploaded to the consultations page of the SCJC website; ideally **within 12 weeks** of closing. It will convey: the way the public has been consulted; how the feedback received has shaped the policy; and the next steps to be taken.

72. Where the recommendations made within a Consultation Analysis report are accepted then those approval decisions will be publicly available from the minutes from the relevant Council meeting. With a straightforward consultation the information within those minutes may provide a sufficient communication without needing to additionally publish a Consultation Response report.

KEEPING THE CONSULTATION PROCESS UNDER REVIEW

73. The secretariat will log any matters of best practice that do arise during a consultation exercise and then consider relevant questions such as:

- Did the consultation reach its intended target audience?
- Did the responses received help or hinder policy making?
- Are there lessons to be learned from what went well or not so well?

74. Where “lessons learned” do arise then in due course they should be incorporated into the best practice approach set out within this document.

Secretariat to the Scottish Civil Justice Council
August 2025

BIBLIOGRAPHY

Guidance on how to consult:

Consultation Good Practice Guidance (*live webpage, SG*)

<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2019/12/foi-201900009119/documents/foi-201900009119---information-released/foi-201900009119---information-released/govscot%3Adocument/FOI-201900009119%2B-%2BInformation%2BReleased.pdf>

Code of Practice on Consultation (*Jul 2008, HM Government*)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

Consultation Principles (*Oct 2013, HM Government*)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

Consultation Principles 2018 (*Mar 2018, HM Government*)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1_.pdf

Guidance on how to assess environmental risks & impacts

Guiding Principles on the Environment (*Aug 2023, SG*)

<https://www.gov.scot/publications/scotlands-guiding-principles-environment-statutory-guidance/documents/>

Accounting for the effects of climate change: Supplementary Green Book guidance
(*Apr 2025, DEFRA*)

Annex A – climate risk and present day impact table

<https://www.gov.uk/government/publications/green-book-supplementary-guidance-environment>

Relevant legislative requirements

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

s13 - The guiding principles on the environment

s15 - Other authorities' duty to have due regard to the guiding principles

<https://www.legislation.gov.uk/asp/2021/4/contents>

Environmental Assessment (Scotland) Act 2005

Sch. 2 – Criteria for determining the likely significance of effects on the environment

<https://www.legislation.gov.uk/asp/2005/15/contents>