



**Scottish  
Civil Justice  
Council**

## **CONSULTATION ANALYSIS: on using online intimation to replace the “walls of court”**

**Issued: 16 June 2025**

## CONTENTS

	<u>Page</u>
Section 1 – Introduction	3
Section 2 – Responses to the Consultation Questions	4
Section 3 – Conclusions	8
Section 4 – Next Steps	9
<i>Bibliography</i>	10

## SECTION 1 - INTRODUCTION

### Purpose

1. To analyse the 6 responses received to the Public Consultation on using online intimation to replace the “walls of court”.
- 

### Timing

2. This consultation opened 31 October 2024 for a 12 week duration to 31 January 2025; and was then extended by 12 weeks to a revised closing on 25 April 2025.
- 

### Why was this consultation undertaken?

3. When a pursuer is intimating a civil action on a defender then occasions will arise where the court will direct that some form of advertising is required. As part of the pandemic response the emergency Covid legislation included a temporary change to support such advertising being provided through the use of ‘online intimation’. In practice that means abbreviated notices are uploaded to the SCTS website so that they can be accessed and viewed online.
4. As that change has been well received the Council sought wider feedback on whether to now adopt that digital service as the permanent court procedure.

#### *The consultation objectives:*

5. The objectives set for this consultation were:
  - To mark the significance of bringing the long standing court tradition of advertising via the ‘walls of court’ to an end;
  - To set out why ‘online intimation’ should be the permanent procedure; and
  - To enable respondents to provide their own views on whether to make that change permanent.

#### *The nature of the feedback being sought:*

6. The Council was consulting early on its proposed policy positions, with a rules instrument to follow where appropriate.
7. The 3 proposals on which feedback was sought were:

- *Proposal 1* - To amend the rules so that ‘online intimation’ would replace all previous references to “the walls of court” (*where the court instructed advertising to take place*);
- *Proposal 2* - To amend the rules so that when the court instructs ‘newspaper advertising’ it is a discretionary judicial decision (*rather than mandatory*); and
- *Proposal 3* - To consider whether (or not) to subsequently shift the notification of potential Executor Dative appointments to the alternative of ‘direct intimation’ (*after confirming the initial shift to online intimation*).

## The responses received

8. There were a total of 6 responses received:

NUMBER OF RESPONSES				
CATEGORY	RESPONDENT	Organisations	Individuals	COMBINED TOTAL
Judiciary	Sheriffs & Summary Sheriffs	1	0	1
Practitioners	Law Society of Scotland	1	0	1
	Scottish Law Agents	1	0	1
Officials	Scottish Courts and Tribunals Service	1	0	1
Advice & Assistance	Citizens Advice Scotland	1	0	1
Public	General Public	0	1	1
TOTALS		5	1	6

9. In line with the permissions given, all 6 responses can be viewed online via the consultation pages on the Councils website’.

<https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-responses-on-using-online-intimation-to-replace-the-walls-of-court>

## SECTION 2 – RESPONSES TO THE CONSULTATION QUESTIONS

10. The Council invited feedback from respondents on 5 questions:

### 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”?**

RESPONDENT	Responded to Q1	Should online intimation be made permanent?
Sheriffs & Summary Sheriffs	Yes	Yes
Law Society of Scotland	Yes	Yes
Scottish Law Agents	Yes	Yes

Scottish Courts and Tribunals Service	Yes	Yes
Citizens Advice Scotland	Yes	Yes
General Public	Yes	Yes

11. One of the stated aims of this consultation was *“To mark the significance of bring the long standing tradition of advertising via the wall of the court to an end”* as reflected in the following response:

*“...shares the regret expressed by others that in doing so an ancient, historical Scots legal phrase will pass into desuetude”.*

12. All 6 responses supported ‘online intimation’ becoming the permanent procedure:

*“Walls of court service was seldom if ever an effective mode of intimation and had become completely anachronistic”*

*“...returning to physical intimation on the “Walls of Court” would be a backwards step and would be contrary to the direction of travel in the context of civil justice reform”*

*“The posting on walls, doors or other parts of court should be seen as archaic and should cease - to be replaced with a digital solution. Legislation should be amended accordingly.”*

13. In terms of how that rule change should be enacted one respondent noted:

*“...that the amended rules should “permit” rather than “require” online intimation as that will allow the court to respond to the particular circumstances of the case.”*

14. Paragraph 23 of the consultation paper narrated the need to improve the current digital service. One respondent commented to the same effect:

*“...improving searchability of notices online will be crucial for the publics’ ability to access the information they need while ensuring the right to privacy and data protection for those whose personal data is published online.”*

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

RESPONDENT	Responded to Q2	Are there any reasons not to?
Sheriffs & Summary Sheriffs	Yes	No
Law Society of Scotland	Yes	No
Scottish Law Agents	Yes	No
Scottish Courts and Tribunals Service	-	-
Citizens Advice Scotland	-	-
General Public	Yes	No

15. None of the 6 respondents offered a reason why this long standing tradition should not be withdrawn.

ADVERTISING VIA NEWSPAPERS:

**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?**

RESPONDENT	Responded to Q3	New spaper advertising should be discretionary?
Sheriffs & Summary Sheriffs	Yes	Not stated
Law Society of Scotland	Yes	Yes
Scottish Law Agents	Yes	Yes
Scottish Courts and Tribunals Service	Yes	Not stated
Citizens Advice Scotland	Yes	Yes
General Public	Yes	Yes

16. None of the responses contained a reason why the decisions on newspaper advertising should not be a matter for judicial discretion.

17. The nature of the comments received were:

- *That newspapers are costly; that many professional creditors will be using ‘credit information services’ to gain access to the information that is published within the gazette; and that some existing rules are already discretionary as they include the word “or”.*
- *The Council should note - that advertising in the international press can still serve a useful purpose in some cases, such as petitions in relation to schemes of arrangement.*
- *The Council should note - the growing relevance of the ‘Public Notice Portal’ that some local newspapers are now using to add value online; to the notices they publish in the print edition: <https://www.pressreader.com/>.*

APPOINTING AN EXECUTOR DATIVE

**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?**

RESPONDENT	Responded to Q4	Changing to direct intimation for Executors Dative?
Sheriffs & Summary Sheriffs	Yes	No – the challenges may make it unworkable
Law Society of Scotland	Yes	No -more information is required on how it would work
Scottish Law Agents	Yes	Yes
Scottish Courts and Tribunals Service	Yes	No – stay with online intimation
Citizens Advice Scotland	Yes	No – requires further consideration
General Public	Yes	No – will not achieve the intended benefits

18. That policy question of whether there was merit in considering the alternative of using ‘direct intimation’ for these appointments was last asked in 1971 and revisiting that same question in 2025 has confirmed the same outcome:

- The ability to lodge a caveat is still seen as the most efficient way to protect the interests of a potential beneficiary (or other potential executor) who may wish to lodge an objection to a pending appointment;
- There is no abuse of process that would warrant making a change to direct intimation as that would add considerable cost onto the petitioner; and
- Given that statute already covers the priority of appointments, it is not for the courts to then question the suitability of that person.

19. The consensus view was that a change to ‘direct intimation’ was not required, and that in conjunction with the use of caveats ‘online intimation’ will provide a more appropriate solution. That said, there was support for some refinement of the way those rules work:

- **DATA PROTECTION** - paragraph 46 of the consultation paper had highlighted that the main benefit sought was to provide improved data protection for the petitioner. One respondent considered that a more straightforward way to achieve that policy outcome is to exclude the address of the petitioner; so that the content of the notice falls below the threshold for personal data:

*“A better proposal would be to retain the SCTS online notification system for executor-dative petitions but with petitioner details omitted and only to publish the details of the deceased.”*

- **NOTICE PERIODS** - paragraph 36 (bullet 7) of the consultation paper noted the recommendation made by the Scottish Law Commission for a review of the notice period with appointments of an executor dative. Respondents did support the suggestion made that, to improve comparability with other procedures, the primary legislation should ideally be amended so that a 21 day notice period applies (rather than 9 days):

*“We would also observe that the induciae in Petitions for the appointment of an Executor Dative is significantly shorter than current practice in other forms of civil procedure and that this may be an appropriate opportunity to consider standardising the period of notice”.*

*“The increase to 21 days makes a lot of sense.”*

---

## IMPACT ASSESSMENTS

**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?**

RESPONDENT	Responded to Q	Changes to impact assessments?
Sheriffs & Summary Sheriffs	Yes	No comment
Law Society of Scotland	Yes	No comment
Scottish Law Agents	Yes	No comment
Scottish Courts and Tribunals Service	N	-
Citizens Advice Scotland	N	*
General Public	N	-

20. None of the responses suggested direct changes to the impact assessments. That said some of the responses to questions 1 to 4 did add further context:

### DPIA

*Data Protection* – to protect a petitioner’s ‘personal data’ the ‘abbreviated notices’ for an executor dative could be limited to:

- The deceased’s name and address; plus
- The petitioner’s name (without their address); plus
- The fact a petition was lodged.

### EQIA

*Digital Exclusion* - was covered within the EQIA and one respondent highlighted the additional information now to hand from research undertaken by Citizens Advice.

## **SECTION 3 – CONCLUSIONS**

21. The conclusions of this analysis are that:

- The online intimation procedure should permanently replace using the walls of court;
- The choices around newspaper advertising should be made a matter of judicial discretion; and
- Online intimation combined with the ability to seek a caveat, remains the most appropriate policy solution regarding executor dative appointments.

### **Proposal 1 – Making ‘online intimation’ a permanent procedure**

22. To progress this change the Council should issue drafting instructions to:

- Reword those rules that require intimation via the “walls of court” to substitute a requirement for “online intimation” via the SCTS website;



- Add a new permanent rule covering the ability to publish abbreviated notices rather than the full document; and withdraw the Lord Presidents Direction No 2 of 2020 - Coronavirus (Scotland) Act 2020;
- For the purpose of an abbreviated notice that signposts potential objectors<sup>1</sup> to the full document in a petition for the appointment of an executor dative:
  - Confirm that as the petitioners address is available within the full document (the petition) it can be excluded from that abbreviated notice (*to improve GDPR compliance by avoiding an unnecessary release of personal data*); and
- Avoid using the phrase “*made publicly available in any other way within a court building*” as that could inadvertently bring in the other registers held open for public inspection within courthouses.

23. In addition the Council should:

- Note the content of the attached DPIA (**Paper 4.1B**) which supports the petitioners address being excluded from the abbreviated notice;
- *Ask the SCTS* - to improve their digital service by enhancing the ability to search the content within each abbreviated notice; and
- *Ask the Scottish Ministers* - to amend section 6 of the Confirmation of Executors (Scotland) Act 1858<sup>2</sup> so that the current notice period of 9 days is increased to 21 days; in order to provide caveat holders with sufficient a sufficient time period to consult their lawyers if lodging an objection.

## **Proposal 2 – Making newspaper advertising discretionary (rather than mandatory)**

24. The Council should issue drafting instructions to:

- Retain the rules that mandate the use of newspapers for public record advertising via the Edinburgh Gazette; and
- Reword those rules that support newspaper advertising more generally so that the use of newspapers is always a discretionary decision for the judiciary.

---

<sup>1</sup> Where they wish to protect their position a potential objector is expected to have lodged a caveat to ensure they will receive direct intimation of any actions raised regarding the deceased.

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/Vict/21-22/56/contents>

**Proposal 3 – Consider a shift to the ‘direct intimation’ of *Petitions for the Appointment of an Executor Dative***

25. The Council should:

- Confirm that proposal 3 is rejected; and
- Confirm that the use of ‘online intimation’ for these appointments, combined with the ability to seek a caveat, remains the most appropriate policy solution;

---

**SECTION 4 – NEXT STEPS**

26. Following the publication of this report the next steps will be:

- *Drafting Instructions* – following consideration of this report the Council will instruct the amended rules required to enable this change;
- *Rules finalised* – when drafted, those amended rules will be considered by the Council and submitted to the Court of Session for approval; and
- *Rules published* – assuming those changes are approved by the Court of Session, that amending Act of Sederunt will be laid with the Scottish Parliament and published via legislation.gov.uk.

**Secretariat to the Scottish Civil Justice Council  
June 2025**

## BIBLIOGRAPHY

### Legislation

Confirmation of Executors (Scotland) Act 1858

<https://www.legislation.gov.uk/ukpga/Vict/21-22/56/contents>

### **Existing rules:**

Act of Sederunt (Confirmation of Executors) 1964

*Schedule 2 – Form of petition for appointment of an executor*

<https://www.legislation.gov.uk/ukSI/1964/1143/contents/made>

Act of Sederunt (Edictal Citations, Commissary Petitions & Petitions of Service) 1971

*Article 2 (2) – Full copy of petition to be displayed*

<https://www.legislation.gov.uk/ukSI/1971/1165/contents/made>

Lord Presidents Direction No 2 of 2020

*Using an ‘abbreviated notice’ in lieu of a full document:*

<https://www.scotcourts.gov.uk/media/ie5jkbq/lord-president-s-direction-no-2-of-2020-publication-on-the-website-of-the-scottish-courts-and-tribunals-service-court-of-session-sheriff-court.pdf>

### **Consultation Documents:**

Public Consultation: on using online intimation to replace the “walls of court”

+ *Business and Regulatory Impact Assessment (BRIA)*

+ *Data Protection Impact Assessment (DPIA)*

+ *Equality Impact Assessment (EQIA)*

<https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/online-intimation---to-replace-the-walls-of-court>