



Scottish
Civil Justice
Council

DATA PROTECTION IMPACT ASSESSMENT:

Abbreviated Notices for an Executor Dative

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

REGARDING: protection of a petitioners personal data when intimating an appointment.

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This is a discretionary DPIA. It was prepared as a matter of “good practice”; as a DPIA is only mandatory where the data or the way it is processed could result in “a high risk to the rights and freedoms of individuals”. The ‘online intimation’ of these appointments falls below that threshold as:

- *The data is not being used for profiling;*
- *The processing does not require the disclosure of “sensitive personal data”; and*
- *The data is not being used for a public monitoring activity.*

Step 1 – POLICY BACKGROUND

If a person dies without leaving a will specifying an Executor Nominate the court may receive a petition to appoint someone (an Executor Dative) to administer the deceased's estate.

Such applications may also arise if an Executor Nominate has died or declined to act.

What is the purpose of this data processing activity?

Under article 2(2) of the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions for Service) 1971 ([UKSI 1971/1165](#)) it is mandatory to advertise these petitions:

(2) Every petition for the appointment of an executor shall be intimated by the Sheriff Clerk affixing a full copy of the petition on the door of the Sheriff Court house or in some conspicuous place of the Court or of the office of the Sheriff Clerk, in such manner as the Sheriff shall direct.

Since 2020 that advertising has been delivered via ‘online intimation’; as the collective term used for the ‘abbreviated notices’ published via the SCTS website:

General public notices:

<https://civilonline.scotcourts.gov.uk/publishednotices>

Court of Session Rolls:

<https://www.scotcourts.gov.uk/current-business/court-rolls/court-of-session>

That digital service does need to evolve over time. For example: the ability to search for and view the content of an abbreviated notice remains subject to a) the data being uploaded in a searchable format (rather than as flat text files) b) the effectiveness of the web scrapers used by Google etc. and c) the level of 'search engine optimisation' on the SCTS website.

Rationale for this intervention

Online intimation was introduced as part of the pandemic response, to replace the historic use of the "walls of court". Respondents to the 2025 Public Consultation supported that procedure being made permanent. Hence this DPIA confirms how the use of that digital service supports compliance with GDPR obligations.

Is there an alternative approach?

YES – there is the alternative of requiring direct intimation. That option is rejected as with minimal expense a potential objector can protect their position by lodging a caveat:

In 1971 - the policy decision taken was to continue to make it mandatory for these petitions to be advertised on the walls of court. That was seen as the right policy response¹ on the basis that these appointments are dealt with administratively and there was no evident abuse of process that would justify putting added costs onto pursuers in order to provide 'direct intimation'. In practice it is left up to potential objectors to make their objections known to the court, and lodging a caveat provided an inexpensive mechanism to do so.

In 2025 – respondents to the 2025 Public Consultation rejected direct intimation by the petitioner. Again the administrative approach of using caveats combined with advertising (via online intimation) was considered to be the right policy response.

What is the legal basis for processing this data?

The vires to prepare draft rules

The Council holds the power to propose draft rules by virtue of section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ([ASP 2013/](#)).

The Court of Session holds the power to then enact those rules under sections 103 and 104 of the Courts Reform (Scotland) Act 2014 ([ASP 2014/18](#)).

In that regard [sections 103 \(2\) \(c\)](#) and [section 104 \(2\) \(c\)](#) of that 2014 Act set out the ability for the Council to define court procedure for:

"...other aspects of the conduct and management of such proceedings, including the use of technology".

GDPR Compliance

¹ Refer paragraph 4.120 of Scottish Law Commission Discussion Paper on Succession (No 136)

All rules are promulgated as Acts of Sederunt so that they have legal effect as enactments. Hence all data processing by the SCTS to support a court rule will automatically comply with the GDPR legal duty:

- GDPR Article 6 (1) (c): processing is **necessary for compliance with a legal obligation** to which the controller is subject.

This DPIA documents the underlying purpose of the rules for these petitions; to provide the additional confirmation that the data processing complies with the GDPR public interest duty:

- GDPR Article 6 (1) (e): processing is **necessary for the performance of a task carried out in the public interest** or in the exercise of official authority vested in the controller.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON DATA SUBJECTS

Is personal data of the deceased being shared?

NO - As the protections related to “personal data” only apply to the living – publishing the NAME and ADDRESS of the deceased does not constitute “personal data”:

Generic Situation	Personal Data	Other Data
Appointment of Executors	NAME (of deceased) ADDRESS (of deceased)	COURT CASE REFERENCE NUMBER

Is this the minimum data that can be shared to achieve the policy objectives?

YES

Is personal data of the petitioner being shared?

YES – where both the NAME and the ADDRESS of the petitioner are published then that does constitute “personal data” enabling their identification.

Generic Situation	Personal Data	Other Data
Appointment of Executors	NAME (of petitioner) ADDRESS (of petitioner)	COURT CASE REFERENCE NUMBER TRADING NAME OR REPRESENTATIVE CAPACITY (if applicable)

Is this the minimum data that can be shared to achieve the policy objectives?

NO - The bare minimum would be to exclude the name and address of petitioner entirely, and just indicate that a petition for appointment had been lodged.

The legislative requirements

In 1858 - Under section 4 (*modes of intimating petition*) of the Confirmation of Executors (Scotland) Act 1858 - a ‘full copy of the petition’ would have originally been affixed to the walls of court:

Every such petition . . . shall be intimated by the commissary clerk affixing on the door of the Commissary Court House, or in some conspicuous place of the court and of the office of the commissary clerk, in such manner as the commissary may direct, **a full copy of the petition**, and by the keeper of the record of edictal citations at Edinburgh inserting in a book, to be kept by him for that purpose, **the names and designations of the petitioner** and of the deceased person, the place and date of his death, and **the character in which the petitioner seeks to be decerned executor**, which particulars the keeper of the record of edictal citations shall cause to be printed and published weekly, . . . in the form of schedule (B.) hereunto annexed; Provided always, that, to enable the keeper of the record of edictal citations to make such publication, the commissary clerk shall transmit to him the said particulars, and to enable the commissary clerk to grant the certificate after mentioned, the keeper of the record of edictal citations shall transmit to the commissary clerk a copy, certified by the said keeper, of the printed and published particulars, **all in such form and manner** and on payment of such fees **as the Court of Session by act of sederunt may direct**

SCHEDULE (B.)

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland

County.	Name and designation of petitioner.	Title of petitioner.	Name and designation of defunct.	Place and date of death.
Edinburgh.	A.B., writer in Edinburgh.	Next of kin.	C.D., merchant in Edinburgh.	No. George St., Edinburgh, 1st January 1857.

In 1964 - the “form” of a petition for appointment was set out in the:

- 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>

In 1971 - the “manner” in which that petition is to be displayed was set out in the:

- 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>

In 2020 – the “manner” in which that petition is to be displayed was changed to displaying an ‘abbreviated notice’ in lieu of the full document; as set out in paragraph 2 (ii)) of the Lord Presidents Direction No 2 of 2020:

<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>

Conclusion

Whilst the name and address of the petitioner must be included within the initiating document; their address can and should be excluded from the ‘abbreviated notice’ as:

- Providing they have put a caveat in place, the vast majority of potential objectors will have already received a ‘direct intimation’ from the court of the petition lodged; and
- The added safeguard of publishing an ‘abbreviated notice’ is only intended to cover the policy gap for the small number of potential objectors that did not lodge a caveat.

Hence the purpose of the ‘abbreviated notice’ is just to signpost the petition lodged to the small subset of potential objectors that do not have a caveat in place, as that allows them to request access to the document itself - which does provide the petitioners name and address (as those details must be included within an initiating document).

Can the data be obtained elsewhere?

YES:

- The deceased's details will already be in the public domain if a death notice or obituary has been published by others (in a newspaper or online);
- The petitioners details may be determined from the 'confirmation' issued or the "confirmation certificates" listing the inventory of estate; and
- Once the details of each confirmation are uploaded to the CODA system used by the SCTS the petitioner's details become a matter of public record.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON DATA PROCESSING

What is the nature, scope, context and purpose of the processing?

Publishing advance notice of these petitions provides a safeguard in the public interest; as it enables the subset of potential objectors that did not lodge a caveat to take pragmatic steps to make their objections known before a decree is issued.

What is the plan for how that personal data will be used and why?

The reason for this data being processed is:

Subject	Purpose of data processing
Appointment of Executors	For the policy gap where a potential objector that did not put a caveat in place - the purpose in including the petitioners name in the abbreviated notice is to further support the ability to lodge an objection to the pending appointment of an Executor Dative.

How long will the personal data be retained and what is the process for deleting it?

The data within the 'abbreviated notice' is displayed online for the notice period set:

Subject	Notice period	Process for deletion
Appointment of Executors	9 days ²	Officials will enter the date for deletion (using 10 days) when they register each application on ICMS

To give potential objectors sufficient time to make representations to the court - the Scottish Law Commission previously suggested a notice period of 14 days and most existing rules default to 21 days. The Council will be lodging a request with the Scottish Ministers to enact a change to a 21 day notice period; as that would contribute to the guiding principle for having similar practice and procedure across all courts.

The right to be forgotten

² Under section 6 of the Confirmation of Executors (Scotland) Act 1858 ([UKPGA 1858/56](#))

It is lawful for the court to hold personal data displayed within an abbreviated notice, providing that notice is automatically deleted after the period of notice set. That deletion supports the “right to be forgotten” in relation to the courts displaying that data online. If a third party “web scraper” continues to repeat that information after expiry of that notice period then the person affected would need to raise an objection with that site.

Will the data be transferred out of the UK and are there protections in place for that data transfer?

The data is uploaded to the SCTS website and can potentially be viewed by anyone in the world with an internet browser. The commercial decisions on the hosting provider, whether the data transits UK data centres only, or whether it is processed offshore are set out in the hosting contract between the service provider and the SCTS.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON DATA RISKS

What are the risks to the data subjects?

The perceived risks are:

- *Reputational Damage (for the petitioner)* – where an objection is lodged then the petitioner may be exposed to reputational damage once that information becomes public.
 - *Reputational Damage (for the court)* – if the rules failed to strike the right balance between a) an individual petitioners right to privacy b) the public’s right to justice being seen to be done and c) the protection of the public interest.
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What are the current measures in place to protect the rights of the data subjects?

Abbreviated Notices – the Lord Presidents Direction No 2 of 2020 had supported an abbreviated notice being published online, rather than the full document. In future that point will be addressed as part of the permanent procedure.

Accessibility – the SCTS website must comply the [Digital Scotland Service Standard](#).

Intimation – there is an ability to restrict personal data to the parties; if the court was to instruct direct intimation of a petition by post, by electronic means, by recorded delivery, or by personal service.

Redaction – before granting access to the full petition (in response to a request regarding an abbreviated notice seen online) officials will redact sensitive information.

Rules prohibiting publication – some specific rules, such as adoption, are only enacted to reinforce to users that the online publication is prohibited in those cases.

Will additional security measures be put in place?

YES – the permanent rules will exclude the petitioners address from the abbreviated notice.