



**Scottish
Civil Justice
Council**

GROUP PROCEDURE: CALL FOR EVIDENCE

Purpose

1. This paper is to seek approval for conducting a call for evidence relating to group procedure.

Background

2. The Council set up the Group Procedure Working Group with the following remit:
 - “To consider the secondary legislation and other matters required to facilitate a full implementation of Part 4 (Group Proceedings) of the Civil Litigation (Expenses & Group Proceedings) (Scotland) Act 2018;
 - To consider the learning from the existing rules in use; including whether to
 - extend RCS Chapter 26A to cover the “opt out” option.
 - To propose any necessary amendments to that existing group procedure.”
3. The working group has been making progress with that remit:
 - In relation to its remit to propose amendments to existing opt-in Group Procedure, it has conducted a targeted consultation of those who have had involvement in the existing procedure, which has resulted in many useful comments which the working group is considering
 - In relation to its remit to consider whether to extend Chapter 26A to cover the opt-out option, the working group wishes to gather a wide range of views to assist it in its consideration. It proposes to do so by a call for evidence. The proposed call for evidence will relate primarily to opt-out procedure but will also touch on opt-in.
4. The responses to the call for evidence will inform the working group in its consideration of its remit. Then the working group will bring its proposals to the SCJC. Thereafter there would be a public consultation before any rules were brought into force.

Call for evidence

5. Annex 1 contains the questions for the proposed call for evidence. The question are grouped to ascertain views in areas relating to:

- General views;
- Procedural aspects;
- Settlement and distribution;
- Funding;
- Expenses; and
- General views on any other aspect.

6. Members are asked for their views and to approve:

- The launch of this call for evidence;
- The questions at annex 1;
- The press release in principle at annex 2 (subject to adjustment based on advice from the communications team); and
- The stakeholder distribution list at annex 3.

1. The Scottish Parliament passed the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”) on 1 May 2018. The Act received Royal Assent on 5 June 2018.
2. Part 4 of the Act allows rules of court to provide for group proceedings in the Court of Session. Rules may provide for group proceedings to be on an opt-in basis, an opt-out basis, or on either an opt-in or opt-out basis. Rules allowing group proceedings on an opt-in basis came into force on 31 July 2020.
3. The SCJC deferred consideration of the introduction of opt-out procedure until sufficient experience had been gained from progressing opt-in actions. The SCJC has now prioritised this subject matter in its work programme for 2025/26 and established a working group to make progress.
4. The SCJC’s Group Procedure Working Group would like to gather views to shape the development of efficient and effective court procedures. We would like to hear from anyone who has an interest in group procedure. The call for evidence will open on Friday 24 October 2025 and close on Friday 23 January 2026.
5. The responses to the call for evidence will inform the SCJC’s consideration of matters required to facilitate a full implementation of Part 4 of the Act, including whether to extend Chapter 26A of the Rules of the Court of Session to cover “opt-out” group proceedings. Thereafter, before any changes are made to the Rules, the SCJC will hold a public consultation.
6. It is the SCJC’s intention to publish responses, subject to respondents’ consent. Please include with your response, a completed consent form confirming whether you wish your response to be published or not.

Questions

General Questions

1. What are your views on the introduction of opt-out group proceedings in accordance with Part 4 of the Act?
2. Are there areas of litigation which should be exempted from opt-out group proceedings, in your view?
3. Should group procedure (whether opt-in or opt-out) apply to judicial reviews in Scotland?

Questions of procedure

4. How should court procedures for opt-out proceedings differ from those which already apply to opt-in actions?
5. How do you think the certification process for opt-out group proceedings should operate?
6. What procedural steps are required to protect the rights of the group members in opt out group proceedings (many of whom may not know that they are part of group proceedings)?
7. Are there any particular measures that should apply to opt-out group procedure for the protection of defenders or respondents, in your view. (e.g. in relation to the ability of a group representative to meet adverse awards of expenses)
8. Should pre-action protocols be a requirement in group proceedings in Scotland (opt-in or opt-out). If so, should these be voluntary or compulsory, and what should happen if they are not complied with?

Questions about settlement and distribution

9. If the case is resolved by a decision of the court, what role should the court have in approving the distribution of the award?
10. If the case is resolved by a settlement, what role should the court have in approving the settlement amount and its distribution?
11. Do you have any views on how unclaimed damages awards or settlement sums should be distributed?

Questions about funding

12. What do you regard as being the main issues for the funding of group proceedings in Scotland (whether opt-in or opt-out)?
13. How do you think that opt-out group proceedings should be funded and what protection measures should be put in place for group members regarding those funding arrangements, in your view?
14. What are your views on disclosure of funding arrangements and confidentiality around funding documents which are lodged with the court (whether opt-out or opt-in)?

Questions about expenses

15. Do you have any views on whether there should be changes to the Taxation of Judicial Expenses Rules 2019 for group proceedings (opt-in or opt-out)?

General questions

16. Are there any aspects of substantive law which could be a barrier to group proceedings working effectively?

17. Are there any other points which you feel are relevant to:

- The procedures relating to the current opt-in regime; or
- May inform and shape a potential opt-out regime in Scotland.

Annex 2 - Press release on group procedure

The Scottish Civil Justice Council is gathering views to shape the development of efficient and effective court procedures on group proceedings.

The Civil Litigation (Expenses and Group Proceedings) Scotland Act 2018 allowed rules of court to be introduced to provide for group proceedings in the Court of Session.

Group proceedings are brought by two or more parties. Rules allowing for group proceedings on an opt-in basis came in to force in 2020. This is where individuals must actively choose to join the action.

The SCJC deferred consideration of the introduction of opt-out procedure, where people are automatically included in the action unless they actively remove themselves, until sufficient experience had been gained from progressing opt-in actions.

It announced in its 2025/26 work programme that it intended to prioritise work on rules for opt-out proceedings and has established a working group to progress this work.

The working group would like to hear from anyone who has an interest in group proceedings. The call for evidence will open on Friday 24 October 2025 and close on Friday 23 January 2026.
Details can be found on the SCJC website (link to be included).

The responses to the call for evidence will inform the SCJC's consideration of matters required to facilitate a full implementation of Part 4 of the Act, including whether to extend Chapter 26A of the Rules of the Court of Session to cover "opt-out" group proceedings. The SCJC intends to hold a public consultation before any changes are made to the rules.

Annex 3 Stakeholder distribution list

Respondents to the SCJC's consultation on Group Proceedings in 2020.

Action on Asbestos
Balfour and Manson
Brodies LLP
Care Inspectorate
Citizens Advice Scotland
CMS Law
Digby Brown Solicitors
Duncan Batchelor – Clyde & Co
Faculty of Advocates
Forum of Insurance Lawyers (Scotland)
Forums of Scottish Claims Managers
Health and Safety Executive
Law Society of Scotland
Lefevre Litigation
NHS National Services Scotland
Scottish Climate Emergency Legal Network
Scottish Courts & Tribunals Service
Scottish Legal Aid Board (SLAB)
Society of Solicitor Advocates
The Association of British Insurers (ABI)
The Association of Personal Injury Lawyers (APIL)
The Money Advice Service
The Scottish Association of Law Centres
The Scottish Human Rights Commission
Thompsons Solicitors
Victim Support Scotland
Which
Slater & Gordon
Pinsent Masons
Restitution Ltd
Woodsford Litigation Funding
Legal Services Agency
Hausfeld & Co LLP
Dr Herbert Woopen
Burness Paull

Additional organisations to be included

Anderson Strathearn
Ariel Flavien, (Perfect Law)
BTO Solicitors
Children's and Young People's Commissioner Scotland
Class Representatives Network
Clyde&Co
CMA Scotland

Consumer Scotland
Convention of Scottish Local Authorities (COSLA)
Department of Business and Trade
DLA Piper
Drummond Miller
Environment Standards Scotland
Environmental Rights Centre for Scotland (ERCS)
Equalities and Human Rights Commissioner (EHCR)
Fair Civil Justice
Federation of Small Business Scotland
Greenpeace
Morton Fraser MacRoberts
Offshore Energies UK
Pogust Goodhead
Professor Alan Paterson (University of Strathclyde)
Quantum Claims
Scottish Confederation of British Industry
Scottish Environment Protection Agency
Scottish Humans Rights Commission (SHRC)
Scottish Information Commissioner
Scottish Law Commission
Scottish Legal Complaints Commission
Scottish Public Services Ombudsman
Sheriffs' / Summary Sheriff's Association
The Association of Litigation Funders
The Collective Redress Lawyers Association
Uplift