



Scottish
Civil Justice
Council

BUSINESS & REGULATORY IMPACT ASSESSMENT:

Modernising the signet

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

REGARDING: The introduction of a new *Order for Service* for use by the Court of Session when it authorises the service of a summons.

LAST UPDATED: **19 November 2024**

Step 1 – POLICY BACKGROUND

What is the purpose of this policy?

To shift to the position where all courts will be issuing a court order to explicitly state that the authority to serve a summons on a defender has been granted by the court. Where such orders are made by the Court of Session, the image of the signet seal within that order will convey that it has 'passed the signet'

Why is this policy being developed or revised now?

An explicit statement within a court order clarifies that court decision for lay users. Removing the requirement to "open and insert" a docket into a user generated document mitigates the cyber security risks arising.

Consultation

The use of the signet seal is part of the long standing traditions of the courts. This consultation documents the courts reasons for proposing this change and the feedback received will inform the final policy decision.

How are staff and / or customers affected by this policy?

Court Users:

- *Pursuers* – will await a formal notification that the court has granted "authority to serve" before they can then proceed to serve their summons on the defender.

- *Defenders* – on receiving a summons most defenders, or their legal representative, will check the court has formally authorised service.

Officers of the Court

- *Court Officials* - on checking the initiating documents it is officials that will generate and issue the *Order for Service*.
- *Messengers at Arms* – will find it easier to confirm that the legal authority to serve has been granted, without needing to search for a docquet placed on the original summons.

The Court

- *Judicial Office Holders* – require awareness of the introduction of the *Order for Service*.
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Options

Option 1 - Do Nothing

Under the do nothing option the use of a docquet to confirm a document has passed the signet would remain. Only minor changes might be made:

- Any permanent rules made for the “electronic transmission” of documents could include a statement that “passing the signet is achieved by the insertion of a docquet; and
- The glossary on the judicial website could include a better form of words to convey what is meant by “signeting”.

Option 1 was rejected as most users will expect court decisions to be expressed within a court order, instead of being conveyed implicitly by a symbol (the signet seal).

Option 2 – New Rules

Under this option the court procedures will be harmonised so that all courts will issue their “authority to serve” in a court order. For the Court of Session that order would include an image of the signet seal to confirm it has passed the signet.

Option 2 is the preferred option.

Benefits

Benefits - Option 1 - Do Nothing

Nil

Benefits - Option 2 – New Rules

The main benefit sought is to ‘improve the user experience’ by:

- **HAVING COMPARABLE PROCEDURES** – most parties to legal proceedings expect the court to explicitly communicate its decisions within a court order. Removing the current differential in procedure will add clarity for those lay users who would benefit from having their ‘authority to serve’ explicitly stated. In turn that change will deliver comparable rules in line with the principle that:
“...*practice and procedure should, where appropriate, be similar in all civil courts*”.
- **PROVIDING AN EXPLICIT COMMUNICATION** – having the court order explicitly state that ‘authority to serve’ has been granted avoids the need for a lay user to understand the implicit communication when a signet seal is seen within the summons itself. This proposed change will put the pursuers ‘authority to serve’ that summons beyond doubt and contribute to the principle for rules being:
“...*as clear & easy to understand as possible*”.
- **REINFORCING THE TRADITIONS OF THE COURT** – in this increasingly digital world the use of the signet seal as a digital watermark will reinforce the constitutional requirements of Scots law and the traditions of the courts as exemplified by; the royal coat of arms above the bench in each courtroom; the use of the court mace; and the designation of senior counsel as Kings Counsel etc.

This proposed change will also support other policy outcomes:

- **DIGITAL SERVICES** – the use of a ‘court order’ is a prerequisite to the courts adopting more complex data exchanges such as Application Processing Interfaces (APIs); and it will improve cyber security as officials will no longer be expected to “open and alter” user generated documents.
- **RULES REWRITE** – the use of a court order is a prerequisite for the introduction of the new Ordinary Procedure Rules that will follow in due course. Those modernised rules anticipate that an *Order for Service* has been introduced; as reflected in paragraph 2.16 of the Procedural Narrative published in 2022; and rule 10 (1) of the example rules used for the 2023 consultation.

Costs

Costs - Option 1 - Do Nothing

- *Replacement Seal* – up to £20,000. The repeated embossing of documents has worn the seal within the manual press, and its replacement is underway. Once the Royal Mint approves the design, jewellers will craft a new seal for insertion into the hand press.

Costs - Option 2 – New Rules

The likely costs are:

- *Replacement Seal* – up to £20,000 (as above) – the signet hand press will be stored in working order to enable the occasional signing of paper documents.
- *Staff Time* – the cost is estimated to be £0. Time will be saved when officials no longer have to manually insert a docquet into a PDF document, or to emboss a seal using the

manual press. That saving will be offset by the time now spent on data entry to generate the new court order. The net impact is likely to be cost neutral.

- *Printing and Intimation* – the cost is estimated to be £0 - on the assumption that electronic transmission remains as the permanent working practice.
- *Downloadable Forms* – a cost of say £1,000 to upload 1 X new word document onto the forms tab of the SCTS website; to specify the format of a digital *Order for Service*.
- *Technology* – a cost of up to £200,000 for data entry screens in ICMS to “generate, check, sign & transmit” the new court order, and add the digital watermark.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS

What feedback has arisen from business engagement?

The legal profession is supportive the ongoing shift to the delivery of end-to-end digital services. Their expectation is that they will be able to use Civil Online to a) track civil cases b) view all user generated documents and c) view all court generated documents.

How has that feedback fed into the development of this proposal?

Using a ‘signed court order’ is a prerequisite to future digitisation.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

To support initial screening for competition impacts, the Council uses the checklist of four questions recommended by the Competition and Markets Authority (CMA):

Will the measure directly or indirectly limit the number or range of suppliers?

NO

Will the measure limit the ability of suppliers to compete?

NO

Will the measure limit suppliers’ incentives to compete vigorously?

NO

Will the measure limit the choices and information available to consumers?

NO

Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

To support initial screening for consumer impacts, the Council mirrors the best practice¹ guidance from Scottish Government which uses the following six questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

NO

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO – the level of data held in the case files for each civil action remains unchanged.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

YES – consumers in the Court of Session will now receive information in writing regarding the courts “authority to serve” their summons. They will no longer be assumed to know that a docquet using the words “passed the signet” was intended to convey the same thing.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

NO

Test run of business forms

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO – the minimal wording within this one page court order will be self-explanatory.

Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

Digital Impact Test

Public services are increasingly being delivered online. To test for relevant opportunities the Council mirrors the best practice² guidance from Scottish Government and uses the following five questions:

¹ <https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/>

² <https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/>

Does the measure take account of changing digital technologies and markets?

YES – the automation of court generated forms is a routine task for software developers within the SCTS.

Will the measure be applicable in a digital/online context?

YES – in due course the parties in Court of Session cases will be able to view this *Order for Service* via Civil Online.

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

Alternatively will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

Court Fees

Will the proposal require changes in *court fee* regulations?

MINOR – The level of fees charged will not change, but the references made to signeting within fee narratives A, B1, and B3 will need to be reworded.

Legal Aid

Will the proposal require changes in *legal aid* regulations?

NO

Recovery of Costs Awarded

Will the proposal require changes in *judicial taxation* regulations?

NO

Enforcement and/or sanctions

Will compliance be enforced, and if so how?

NOT APPLICABLE – This step in legal process is taken by the court.

Are there sanctions for non-compliance?

NOT APPLICABLE – This step in legal process is taken by the court.

Step 7 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

Implementation Plan

What is the timescale for this proposal to be implemented?

Estimated at 10 months from the opening date for this consultation:

- 3 months – for the public consultation;
- 1 months - for the consultation analysis;
- 2 months - to prepare the draft instrument;
- 1 months – to seek the Councils approval of the draft instrument;
- 1 months – for the rules to be considered and approved by the Court of Session; and
- 2 months – to provide a familiarisation period for court users.

How will this proposal be implemented?

The change will be enacted by Act of Sederunt. It will take legal effect from the commencement date set within that instrument.

Monitoring

Will the resultant changes be monitored, and if so how?

YES:

- Qualitative Monitoring – for user feedback on the rules in use.
- Quantitative Monitoring – on the volume of ‘Orders for Service’ issued.

Will the resultant changes be evaluated, and if so how?

NO – the rules are being harmonised onto a known approach for generating court orders so of itself this change would not require evaluation. An Evaluation Report would only arise by exception (if there was evident user dissatisfaction).

Will a post implementation review need to be undertaken, and if so when?

NO