



**Scottish
Civil Justice
Council**

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

31 October 2024

CONTENTS

	<u>Page</u>
Section 1 – Responding to this consultation	3
Section 2 – Executive Summary	5
Section 3 – Online intimation	7
Section 4 – Direct intimation	10
Section 5 – Summary of the proposed changes	12
Section 6 – The consultation questions	15
Section 7 – The next steps	15
Bibliography	17
<i>Annex 1 – The temporary legislation</i>	19
<i>Annex 2 – The rules to be amended</i>	20

Supporting Documents:

- *Respondent Information Form*
- *Business and Regulatory Impact Assessment (BRIA)*
- *Data Protection Impact Assessment*
- *Equalities Impact Assessment (EQIA)*

SECTION 1: RESPONDING TO THIS CONSULTATION

1. As a temporary response to the pandemic the emergency Covid legislation supported a procedural change to using ‘online intimation’ - when the court had directed that advertising was to be included when intimating a civil action. In practice that meant abbreviated notices were uploaded to the SCTS website so that they could be accessed and viewed online.
2. That switch to ‘online intimation’ was part of the plans to modernise the courts, and its introduction was simply accelerated by the pandemic. As that change has been well received by court users the Council has concluded that the ability to use this digital service should now be confirmed as the permanent procedure and this paper seeks feedback on making that change.
3. This public consultation will be open for twelve weeks. Written responses are invited by **31 January 2025**.
4. To respond please email scjc@scotcourts.gov.uk with your response, along with a completed **Respondent Information Form**.

Why have a public consultation?

5. Pursuers in a civil action will incur costs when the court rules direct that advertising is to be undertaken; so running this Public Consultation will capture the widest possible range of views before the Council does take a final decision. The aims in resourcing this consultation exercise are:
 - 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 it is appropriate for ‘*online intimation*’ to now be adopted as the permanent court procedure; and
 - To enable any potential respondent to provide their own views on whether these proposed changes should be made.

How will your response will be handled?

6. Your response will be handled in line with the information you provide within your ‘Respondent Information Form’. If you indicate you are content for your response to be published it will be uploaded to the SCJC website. If you ask for your response not to be published it will be regarded as confidential and treated accordingly.
7. Respondents should note that the Council is subject to the Freedom of Information (Scotland) Act 2002. In practice that would mean that if a Freedom of Information (FOI) request was received about this consultation then any individual response (including those not published) may need to be made available as part of that FOI response.

Who are we consulting with?

8. The Council is inviting responses from anyone that may wish to provide relevant feedback. At a minimum that is likely to include:

General Public:

Parties in proceedings where intimation did require advertising

Advice and Assistance:

Citizens Advice Scotland

Other organisations who provide advice on the options used for intimation

Consumer Bodies:

Consumer Scotland

Which

Judiciary:

Senators of the College of Justice

Sheriffs Principal

Sheriffs and Summary Sheriffs Association

Practitioners:

Faculty of Advocates

Law Society of Scotland

Officials:

Scottish Courts and Tribunals Service

Scottish Legal Aid Board

9. To support the policy interests of Scottish Ministers, the Council has provided a copy of this consultation to officials within the Scottish Government.

Comments and complaints

10. If you should wish to provide general feedback on the content of this consultation or how it is being conducted, then please email scjc@scotcourts.gov.uk.

SECTION 2: EXECUTIVE SUMMARY

Purpose

11. To seek feedback on three proposed changes:

Proposal 1 - To amend the rules so that ‘online intimation’ replaces previous references to “the walls of court” when the court instructs such advertising to take place;

Proposal 2 - To amend the rules so that when newspaper advertising is instructed it will be a discretionary decision rather than mandatory; and

Proposal 3 - Subject to a change in the law; shift the notification of any potential Executor Dative appointment to ‘direct intimation’ (*in due course*).

12. These proposals should be read in conjunction with the impact assessments that accompany this consultation:

- Business and Regulatory Impact Assessment (BRIA);
- Data Protection Impact Assessment (DPIA); and
- Equality Impact Assessment (EQIA).

Timing:

13. On 30 November 2025 the temporary legislation that supports ‘online intimation’ will expire. That legal cover is set out at paragraph 4 of the schedule¹ to the *Coronavirus (Recovery and Reform) (Scotland) Act 2022*² (refer Annex 1).

14. Analysing the feedback to this consultation will facilitate relevant rules being instructed, drafted, proposed and enacted before that Act of 2022 expires.

Methodology

15. The Council is consulting early on these initial proposals at a policy level. Subject to respondents supporting this proposed direction of travel, a rules instrument will then follow to progress the changes considered appropriate.

16. The following definitions are relevant:

WALLS OF COURT - originally this phrase was meant literally. In the 17th century the court would require a pursuer to physically pin some or all of their initiating documents onto the walls of court to bring their proposed litigation to the public’s attention. That reflected that courthouses were significant public buildings that provided a public place well frequented by legal practitioners and members of the local community. Over time that early working practice

¹ <https://www.legislation.gov.uk/asp/2022/8/schedule>

² <https://www.legislation.gov.uk/asp/2022/8/contents>

has evolved into abbreviated notices being placed onto “noticeboards” or hooks located within the public areas of each courthouse.

ONLINE INTIMATION – this is the capability to advertise abbreviated notices via relevant webpages on the main SCTS website³. In practice court officials will upload those abbreviated notices as either information to be displayed within the “public notices” webpage⁴ or information to be inserted into the “electronic “rolls of court”⁵.

EXECUTOR DATIVE – if a person dies without leaving a valid will then the court may receive a petition to appoint a suitable person to administer the ingathering of their estate. If the court approves that petition, the appointed person is referred to in law as the “Executor Dative”.

WHEREABOUTS UNKNOWN – the standard options used for intimation would be unavailable if a defenders current address cannot be established. Hence the need to have a procedure to cover what a pursuer should do once they have exhausted all other reasonable options for locating that defender.

The three advertising options available (*prior to the pandemic*):

17. When civil litigation is commenced the court does need to be assured that the defender has been made aware of the litigation against them; so that they are in a position to lodge a defence should they choose to do so. For the majority of civil proceedings that outcome is supported via the standard options for providing ‘intimation’ which are - by personal service; by recorded delivery; by post; or by electronic means. For a small subset of civil actions the courts may decide to go a step further and require a pursuer to advertise proceedings more generally.
18. Prior to 2016 there were two options available for such advertising:
 - *Option 1* - Advertising via the “walls of court”; or
 - *Option 2* - Advertising via a local newspaper.
19. From 2016 onwards Simple Procedure became available and under that procedure a third advertising option was added:
 - *Option 3* – Online intimation (*via the SCTS website*).

The temporary response (*to the Pandemic*):

Option 1 – Walls of Court:

20. With the onset of the pandemic in 2020 the majority of the courthouses in Scotland were closed so any advertising displayed via the physical walls of court

³ <https://scotcourts.gov.uk/>

⁴ <https://civilonline.scotcourts.gov.uk/publishednotices>

⁵ <https://scotcourts.gov.uk/current-business/court-rolls/court-of-session>

would have served no useful purpose within an empty building. That made advertising option 1 (*walls of court*) unworkable.

Option 2 – Newspapers:

21. The high potential for disease transmission when manually handling paper created threats to the health and safety of all citizens which made the ongoing use of physical newspapers problematic. That made advertising option 2 (*newspapers*) unworkable.

Option 3 - Online Intimation

22. The pragmatic solution left was for the courts to extend the existing option 3 (*online intimation*) beyond Simple Procedure to cover all proceedings. In practice that meant a) disapplying the existing rules that required advertising via the walls of court or mandatory advertising via newspapers and b) relying on the temporary legal cover for that change provided by the emergency Covid legislation.

The current digital service

23. The pragmatic steps taken in 2020 introduced the current [webpage](#) that supports the online intimation of abbreviated notices. In due course the functionality of that webpage will need to be expanded to include the ability to better search for the information contained within each abbreviated notice. The nature of that required digital change will be informed by the feedback to this consultation.

Conclusion

24. In practice ‘online intimation’ has been in daily use across all courts since 2020 and it has become a matter of routine for the court, the judiciary, legal practitioners and all parties to any civil action. That modernised approach has been well received by all court users and the main proposal made by this paper is to retain ‘online intimation’ as the permanent procedure.

SECTION 3: ONLINE INTIMATION

When do the courts consider advertising?

25. When considering the intimation of civil actions, the need to instruct advertising would arise in 5 situations:

PETITION PROCEDURE – the petitions procedure of the Court of Session is used whenever an administrative order of that court is required for something to be done which requires an explicit judicial authority to be given. As a

safeguard to support “justice being seen to be done” those rules include a blanket requirement for all of the cases raised under this petition procedure to be advertised for a period of 12 weeks.

WHEREABOUTS UNKNOWN – in the subset of cases where a defender's current address cannot be established the court will explore whether the pursuer has taken all reasonable steps to locate that defender. If so, the court may consider instructing advertising as a last resort, or alternatively dispense with service altogether. Where a notice is to be advertised then it will be for such notice period as may be specified by the court.

INSOLVENCY – in a petition to wind up a company the insolvency rules mandate service on the registered office of that company, and on any liquidator or receiver appointed. In addition; those rules also make it **mandatory** to provide advertising via the walls of court, via the Edinburgh Gazette and via any one or more newspapers the court may direct.

APPOINTMENT OF AN EXECUTOR DATIVE – when last reviewed in 1971 the rules continued to make it **mandatory**⁶ for these petitions to be advertised on the walls of court before the court could proceed to issue a decree. At that time a policy choice limiting such advertising to the walls of court was considered to be a sufficient⁷ policy response on the basis that a) these appointments are dealt with administratively and b) there was no evident abuse of process that justified putting added costs onto pursuers for them to provide ‘direct intimation’. Those rules left it up to those with an interest in an estate to make their objections known to the court, and lodging a caveat was seen as providing them with a simple and inexpensive mechanism to do so.

OTHER APPOINTMENTS – certain other appointments made by the court also include a **mandatory** requirement for intimation via the walls of court, such as the blanket advertising of all current applications for the appointment of judicial factors, sheriff officers and messengers at arms.

What options are used when advertising?

26. Whilst the exact wording used may differ, the three advertising options available can be summarised as:

ADVERTISING VIA THE WALLS OF COURT – in practice it is recognised that advertising placed on the noticeboards in the public area of a courthouse does only provide limited assistance when intimating a civil action. That reflects the low probability that the abbreviated notice might be brought to an intended recipient's attention by others in the court building, or that a defender might otherwise know to look out for a pending notice.

⁶ Under section 2(2) of the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions for Service) 1971 ([UKSI 1971/1165](#))

⁷ Refer paragraph 4.120 of Scottish Law Commission Discussion Paper on Succession (No 136)

ADVERTISING VIA NEWSPAPERS -prior to the introduction of the internet, an advertisement placed within the public notices section of a local newspaper had a reasonable chance of being seen by the intended recipient, or being brought to their attention by others. With the passage of time the general usefulness of newspaper advertising has diminished in line with the decline in newspaper readership. That said, some local newspapers do retain a reasonable level of reach within their local communities so the level of advertising costs incurred by a pursuer can be justified in cases where it is likely to help an intimation to reach the intended recipient. For individual cases the rules should retain a judicial discretion to direct the use of newspaper advertising when appropriate.

ONLINE INTIMATION – in theory the ability to search for and view the content of an abbreviated notice should increase when made available online. In practice that outcome remains subject to a) the data being uploaded in a searchable format, b) the effectiveness of the web scrapers used by google etc. and c) the specific steps taken to support ‘search engine optimisation’. The expectation is that the digital service offered will need to evolve over time.

Which rules will need to be amended?

27. Annex 2 lists all existing rules that make reference to advertising via the walls of court or advertising via newspapers. The exact wording may vary but those rules do all arise under 1 of the 5 general situations noted above (*petitions procedure / whereabouts unknown / insolvency / executor dative / other appointments*).
28. The feedback received from respondents will inform the Drafting Instructions to be issued, and respondents should note the suggestions already made:

Abbreviated Notices – to complement the temporary legislation the ability to publish abbreviated notices (*rather than full documents*) was set out in the Lord Presidents Direction No 2 of 2020. To manage expectations from anyone that may be expecting online access to the full documents, that differential should be clarified within the permanent rules.

Advertising in the Edinburgh Gazette – in comparison to general advertising in a newspaper, any requirement to publish a notice in the Edinburgh Gazette⁸ fulfils a different purpose by creating part of the official record. The expectation is that those rules will be retained.

Registers open for public inspection – the phrase “made publicly available in any other way within a court building” can inadvertently bring in a range of registers held open for public inspection within courthouses. The use of alternative wording would ensure the following registers remain outside the ambit of the rules on ‘online intimation’:

- The Register of Summary Causes;
- The Register of Small Claims; and

⁸ Paragraph 6 (a)-*Sheriff Court Company Insolvency Rules 1986* ([SSI 1986/2297](#))

- The Commissary Court Books.

Is the disclosure of personal data justified?

29. The Data Protection Impact Assessment (DPIA) accompanying this consultation conveys the legal safeguards made available in both the public interest and in the interests of justice. The Council has concluded that those safeguards do sufficiently mitigate the disclosure risks regarding personal data.

The policy position – for online intimation:

30. The general conclusions are:

- *Advertising via the walls of court* - is outdated and to support the modernisation of the courts those rules should be withdrawn and replaced by rules that support advertising by way of 'online intimation'; and
- *Advertising via local newspapers* – mandating the use of newspapers is outdated and those rules should be amended. They should be replaced by rules that provide for judicial discretion to be used in cases where the use of newspapers is considered appropriate.
- *Simple Procedure Special Claims (SPSC)* – once these new rules are finalised and can be enacted then the summary cause rules, and any remaining small claims rules, will be revoked. Until then those two existing procedures may also require amendment to recognise these proposed changes in the interim.
- *Simple Procedure (core rules)* – this procedure already has rules to support 'online intimation' so there are no amendments required:

Simple Procedure - Part 6: Sending and formal service –

- Rule 6.12 - What if the claimant does not know the respondent's address?
 - 6.12 (4) - *The sheriff may order the details of the claim to be publicised by advertisement on the Scottish Courts and Tribunals Service web site.*

Simple Procedure - Part 15: How to enforce a decision

- Rule 15.4: What if the claimant does not know the respondent's address?
 - 15.4 (3) *The sheriff clerk must then publicise the Charge by advertising its details on the Scottish Courts and Tribunals Service web site for 4 weeks.*

SECTION 4: DIRECT INTIMATION

31. When advertising the notices that arise with 'Petitions for the appointment of an Executor Dative' the Council is aware that the risks around the unnecessary disclosure of personal data could be mitigated further if the petitioners were required to use 'direct intimation' for those applications.

32. **In 1971** – There were two policy choices considered: a) petitioners could directly intimate their application to the relatives and others involved with an estate or b) petitioners could indirectly intimate that application via the walls of court. In the absence of any abuse of process the decision reached in 1971 simply reconfirmed earlier decisions that, when combined with a caveat, intimation via the walls of court provided sufficient protection.

33. **In 2024** – Five decades have now passed and in revisiting that same policy choice in 2024 there is a need to recognise:

The significant changes in family life:

- The nature of families has changed with increases in the number of second and third marriages resulting in blended families, which adds complexity to the definition of siblings and the estates contested;
- There has been an increase in romance fraud as perpetrators try to ingratiate themselves into the lives of the elderly for financial reward;
- Inflation has considerably increased the value of the estates that may be put at risk through the appointment of an unsuitable executor; and
- There remain limited options for the removal of an executor once appointed (*Although section 80 of the Trusts and Succession (Scotland) Act 2024 now excludes a murderer from being an executor*).

The shift to an increasingly digital world:

- The introduction of email etc. has added other more cost effective options to support direct intimation by electronic means; and
- The increased volume of digital processing does mean that the protection of personal data is more relevant than it was in 1971.

The conclusion

34. The Council has concluded that the rules should be amended to require each petitioner to ‘directly intimate’ their potential appointment to the relatives and other parties to the estate as that:

- Responds to the significant changes to family life over the last 5 decades; and
- Protects “personal data” from being disclosed unnecessarily.

35. The benefits sought from making that shift are:

- It significantly increases the probability of an intimation reaching its intended recipient;
- If the recipients are willing to accept intimation by electronic means then the charges a petitioner might otherwise incur would be nil; and
- The shift away from ‘online intimation’ limits the disclosure of personal data to the small number of people directly involved in an estate, avoiding the need to unnecessarily⁹ disclose a petitioner’s personal data to the public at large.

⁹ As a ‘certificate of confirmation’ is a matter of public record, it could be used to access the petitioner’s data.

Implementing that change

36. Implementation of that proposed change requires:

- *Changes to the primary legislation* - in the [Confirmation of Executors \(Scotland\) Act 1858](#);
- *Changes to the existing Form* - in schedule 2 of the Act of Sederunt (Confirmation of Executors) 1964 ([UKSI 1964/1143](#));
- *Changes to the existing rules* - in the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service 1971 ([UKSI 1971/1165](#));
- *A review of the timetabled dates* - to assess the suitability of the period of notice, the dates for issuing and extracting a decree, and for appeals;
- *Confirming particular procedures* - such as:
 - When the surviving spouse or civil partner has an exclusive right to be appointed Executor Dative, or where there are no known relatives;
 - When the whereabouts of another potential executor or a potential beneficiary is unknown;
 - When a court hearing may be required to make a judgement between competing applications to be an Executor Dative;
- *Defining the administrative tasks* - that could potentially be undertaken by court officials in order to minimise unnecessary judicial involvement; and
- *Reviewing the Notice Periods* – by law a notice period of 9 days¹⁰ is applied to provide for the interval between advertising a petition for *Appointment of an Executor Dative* and the court granting decree. Current time periods tend to be based on multiples of 7 days. To give caveat holders enough time to make representations to the court the Scottish Law Commission (SLC) had previously suggested¹¹ a period of 14 days and there have been a number of other court rules since then standardised on 21 days. Securing a potential change in primary legislation to 21 days is in line with the Councils guiding principle for “...having similar practice and procedure across the courts”.

SECTION 5 – SUMMARY OF THE PROPOSED CHANGES

Proposal 1 – Making ‘online intimation’ a permanent procedure

37. Where a court considers it appropriate to instruct advertising as a part of the intimation process then it is proposed that the amended court rules will:

- OMIT - the existing rules (*refer annex 2*) requiring intimation via the “walls of court”; and

¹⁰ The nine day notice period was set by primary legislation; under section 6 (Procedure on petition) of the Confirmation of Executors (Scotland) Act 1858 ([UKPGA 1858/56](#))

¹¹ Paragraph 4.122 of the SLC [Discussion Paper on Succession](#) (No. 136) and recommendation 70 of the subsequent SLC [Report on Succession](#) (No 215)

- **SUBSTITUTE** – amended rules that require “online intimation” via the SCTS website.

38. In practice that change reflects the existing working practice that has operated successfully across the courts since the pandemic. This shift to permanent rules will replace the temporary legal cover provided for under the schedule¹² to the Coronavirus (Recovery and Reform) (Scotland) Act 2022¹³ (refer Annex 1).

39. The benefits of making this proposed change to ‘online intimation’ are:

TO MODERNISE THE COURTS – there is a longer term strategic aim within the SCTS Corporate Plan to deliver fully end-to-end digital services. The current service enables ‘online intimation’ and enacting permanent rules will lock in the statutory footing to underpin that service.

TO FUTURE PROOF THE RULES – the new *Ordinary Procedure Rules* proposed by the Rules Rewrite Committee embody the electronic transmission of documents and the use of advertising via online intimation¹⁴. That permanent shift away from using the walls of court was anticipated in paragraphs 2.22 and 2.23 of the [Procedural Narrative](#) when published in 2022, and then reinforced in the 2023 [consultation](#) on what those future rules might look like.

40. The disadvantages of that change are:

THE LOSS OF TRADITION – displaying notices on the walls of court has been part of the customs of the courts for centuries, although that practice is unlikely to be widely known by the general public. Bringing that working practice to an end does need to be marked for those who do value the traditions of the court, and the history of Scots Law.

41. The expected costs are:

TECHNOLOGY – the incremental costs in having permanent rules for online intimation are nil; as those sunk costs were incurred back in 2020 as part of the pandemic response. No new technology investment would be required as a direct consequence of the shift to permanent rules.

Proposal 2 – Making newspaper advertising discretionary

42. Where a court considers it appropriate to instruct advertising as a part of the intimation process then it is proposed that the amended court rules will:

¹² <https://www.legislation.gov.uk/asp/2022/8/schedule>

¹³ <https://www.legislation.gov.uk/asp/2022/8/contents>

¹⁴ *The new Ordinary Procedure Rule 11 (1) (d) includes service by such other method “as the court may specify, including service by online publication on the Scottish Courts and Tribunals website.”*

- OMIT - the existing rules (*refer annex 2*) that require mandatory advertising via “newspapers”; and
- SUBSTITUTE – amended rules to support the discretionary use of newspapers.

43. On a daily basis that is the working practice that has operated across the courts since the pandemic response was initiated. This proposed shift to permanent rules will replace the temporary legal cover provided for under the schedule¹⁵ to the Coronavirus (Recovery and Reform) (Scotland) Act 2022¹⁶ (*refer Annex 1*).

Proposal 3 – A longer term shift to the ‘direct intimation’ of *Petitions for the Appointment of an Executor Dative*

44. *In the short term* – the rules covering *Petitions for the Appointment of an Executor Dative* will be amended to support the shift to ‘online intimation’ as set out under proposal 1.

45. *Over the longer term* - the rules covering *Petitions for the Appointment of an Executor Dative* should be further amended to support a subsequent shift from ‘online intimation’ to ‘direct intimation’. The timing of that longer term shift is dependent on prerequisite changes being made to the primary legislation.

46. The benefit of a change to ‘direct intimation’ is:

TO IMPROVE DATA PROTECTION – having a petitioner “directly intimate” their application to be an Executor Dative limits the disclosure of their personal data to just those parties that do have a valid interest in the deceased’s persons estate, and will avoid any unnecessary data disclosure to the general public.

47. The expected costs

ADDED COSTS FOR THE PETITIONER – a petitioner would have no additional costs where a recipient does indicate they will accept intimation by electronic means. If personal service, recorded delivery or postal service is selected then that petitioner would need to meet those charges.

COURT FEES – as the appointment of an executor is only one of the multiple risks to be guarded against in an estate that may become contested the volume of caveats and the related fee income is unlikely to change.

TECHNOLOGY – a small investment may be required to amend the screens used by court officials when registering an Application for Appointment as an Executor Dative.

¹⁵ <https://www.legislation.gov.uk/asp/2022/8/schedule>

¹⁶ <https://www.legislation.gov.uk/asp/2022/8/contents>

SECTION 6 – THE CONSULTATION QUESTIONS

48. Given the proposed changes summarised in section 5; the Committee would appreciate your feedback on the following questions:

Proposal 1 - 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”?

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

Proposal 2 - Newspaper Advertising:

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?

Proposal 3 - Direct Intimation:

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?

Business and Regulatory Impact assessment (BRIA); Data Protection Impact Assessment (DPIA); and Equality Impact Assessment (EQIA):

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?

SECTION 6 – THE NEXT STEPS

49. Following the closing date for this consultation, the next steps will be:

Individual Responses - the secretariat will upload the responses received to the consultation page of the SCJC website as soon as practicable after the closing date (where permission to publish was given);

Consultation Analysis – the secretariat will prepare an analysis of responses for consideration by the Council, and publication via the website.

Consultation Response - having considered that Analysis of Responses, the Council will issue drafting instructions for the preparation of draft rules.

Draft Rules – amending rules will then be prepared for consideration by the Council. If approved, those draft rules would be proposed to the Court of Session for their consideration and approval.

50. Subject to the rules being approved and signed by the Court of Session:

Publication - the amending Act of Sederunt will be laid with the Scottish Parliament and published via legislation.gov.uk.

Commencement - the current target date for that amending rules instrument to come into force is 30 November 2025; for concurrence with the expiry date for paragraph 4 of schedule 1 of the 2022 Act.

**Secretariat to the Scottish Civil Justice Council
October 2024**

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

Succession (Scotland) Act 2016

<https://www.legislation.gov.uk/asp/2016/7/contents>

Coronavirus (Recovery and Reform) (Scotland) Act 2022

<https://www.legislation.gov.uk/asp/2022/8/contents>

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023

<https://www.legislation.gov.uk/ssi/2023/360/contents/made>

Trusts and Succession (Scotland) Act 2024

<https://www.legislation.gov.uk/asp/2024/2/contents>

Rules: Note - Annex 2 lists those existing rules that may need to be amended.

Rules Rewrite - The Procedural Narrative (Aug 2022, SCJC)

Paragraphs 2.22-2.23 – narrates the expected procedure for “whereabouts unknown”

[https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/targeted-consultation--ordinary-procedure-rules/c---the-procedural-narrative-\(as-published-03-08-2022\).pdf?sfvrsn=57dfc777_1](https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/targeted-consultation--ordinary-procedure-rules/c---the-procedural-narrative-(as-published-03-08-2022).pdf?sfvrsn=57dfc777_1)

Rules Rewrite – Draft Rules (Aug 2023, SCJC)

Rule 11 (service of a summons)

[https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/targeted-consultation--ordinary-procedure-rules/b---draft-rules-\(worked-example-only\).pdf?sfvrsn=c721baf6_1](https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/targeted-consultation--ordinary-procedure-rules/b---draft-rules-(worked-example-only).pdf?sfvrsn=c721baf6_1)

Guidance:

Lord Presidents Direction No 2 of 2020 - Coronavirus (Scotland) Act 2020

[https://scotcourts.gov.uk/docs/default-source/rules-and-practice/coronavirus-temp-orders/lord-president/coronavirus-\(scotland\)-act-2020-lord-president-s-direction-no-2-of-2020.pdf?sfvrsn=5835bbd2_2](https://scotcourts.gov.uk/docs/default-source/rules-and-practice/coronavirus-temp-orders/lord-president/coronavirus-(scotland)-act-2020-lord-president-s-direction-no-2-of-2020.pdf?sfvrsn=5835bbd2_2)

Reviews:

Discussion Paper (No 136) on Succession (SLC, Aug 2007)

Refer paragraph 4.120 and 4.122

<https://www.scotlawcom.gov.uk/files/1012/7885/3181/dp136.pdf>

Report on Succession (No 215) (SLC, Apr 2009)

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Consultation on the law of succession (*Feb 2019, SG*)

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2019/02/consultation-law-succession/documents/consultation-law-succession/consultation-law-succession/govscot%3Adocument/00546296.pdf>

News Articles:

When estates divide (*Dec 2023, Law Society of Scotland*)

<https://www.lawscot.org.uk/members/journal/issues/vol-68-issue-12/when-estates-divide/>

Ruinously expensive: record number inheritance disputes (*Feb 2024, The Guardian*)

<https://www.theguardian.com/money/2024/feb/24/record-number-inheritance-disputes-england-and-wales-wills>

ANNEX 1 – THE TEMPORARY LEGISLATION

The temporary legislation that covers ‘online intimation’ can be found in [Paragraph 4](#) (Intimation etc. on Scottish Courts and Tribunals Service website) of Schedule 1 (Temporary Justice Measures) of the 2022 Act (ASP 2022/8). That paragraph reads:

Intimation etc. on Scottish Courts and Tribunals Service website

- 4 (1) Any requirement (however expressed) that a document—
- (a) be put on the walls, doors or any other part of a court building (whether internal or external), or
 - (b) be made publicly available in any other way within a court building.
- may be fulfilled instead by the document's being made publicly available through the Scottish Courts and Tribunals Service website.
- (2) But sub-paragraph (1) does not apply to a document if it is of a type that—
- (a) the Lord President of the Court of Session, or
 - (b) the Lord Justice General,
- has directed that sub-paragraph (1) does not apply to.
- (3) Where a document is to be made publicly available through the Scottish Courts and Tribunals Service website by virtue of this paragraph, it is to so be made available in accordance with—
- (a) any direction issued by—
 - (i) the Lord President of the Court of Session, or
 - (ii) the Lord Justice General, and
 - (b) (subject to any necessary modifications) any enactment about—
 - (i) how a step mentioned in paragraph (a) or (b) of sub-paragraph (1) is to be taken in relation to the document, or
 - (ii) the length of time for which the document is to be made publicly available in a way described by those paragraphs.
- (4) A direction under sub-paragraph (3)(a) may, in particular, provide that a document is to be made available only in a redacted form.
- (5) If an enactment provides for an alternative to taking a step mentioned in paragraph (a) or (b) of sub-paragraph (1) as a means of achieving an outcome (for example, advertising an application in a newspaper as a means of intimating it), nothing in this paragraph precludes the taking of that alternative step to achieve the outcome.
- (6) In this paragraph, “the Scottish Courts and Tribunals Service website” means the website maintained by, or on behalf of, the Service with the internet domain name scotcourts.gov.uk.

Commencement Information

14 Sch. para. 4 in force at 1.10.2022, see s. 59(1)

For cases over £5,000 the practical effect of paragraph 4 has been:

- Sentence 1 provided for the ongoing use of online intimation; and
- Sentence 5 disapplied advertising by the walls of court or newspapers.

ANNEX 2 – THE RULES TO BE AMENDED

This annex provides an indicative list of existing rules (and associated forms) that currently make reference to advertising via the walls of court and/or newspapers.

Petitions Procedure:

Act of Sederunt (Rules of the Court of Session 1994) 1994 ([UKSI 1994/1443](#))

RCS – CH 14: PETITIONS

- Rule 14.7 (*Intimation and service of petitions*)

Whereabouts Unknown:

Rules of the Court of Session (RCS)

RCS – CH 13: SUMMONSES, NOTICE, WARRANTS AND CALLING

- Rule 13.3 (*Address of Defender*)

RCS – CH 16 - SERVICE, INTIMATION AND DILIGENCE

- Rules 16.5 (*Service where address of person is not known*)

RCS – CH 23 - MOTIONS

- Rule 23.6 (*Hearing of motions*)
- Rule 23.7 (*Motions in vacation*)

RCS – CH 67 - APPLICATIONS UNDER THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

- Rule 67.22 (Amendment of adoption order)
- Rule 67.23 (Applications under sections 20 to 24 of the 2007 Act)

RCS – CH 97 - APPLICATIONS FOR PARENTAL ORDERS UNDER THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

- Rule 97.14 (Amendment of parental order)

RCS – CH 106 - MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

- Rule 106.10 (*Adjustment of incoming protection measure*)
 - Paragraph 7

FORMS – 106.10B

Ordinary Cause Rules (OCR)

OCR CH 5: CITATION, SERVICE AND INTIMATION

- Rule 5.6 (*Service where address of person is not known*)

OCR CH 30: DECREES, EXTRACTS AND EXECUTION

- Rule 30.9 (*Service of charge where address of defender is not known*)

ANNEX 2 – THE RULES TO BE AMENDED ...continued

OCR CH 33: FAMILY ACTIONS – PART XI SIMPLIFIED DIVORCE APPLICATIONS

- Rule 33.77 (*Citation where address not known*)

OCR CH 33A – CIVIL PARTNERSHIP ACTIONS

- Rules 33A.70 (*Citation where address not known*)

FORMS – G3 / G4 / F36 / CP35

Summary Applications, Statutory Applications and Appeals etc. Rules:

- Chapter 2 – Summary Applications:
 - Rule 2.13 (*Service where address of person is not known*)
- Chapter 3: Part XLV – Mutual recognition of protection measures in civil matters:
 - Rule 3.45.11 (*Adjustment of incoming protection measure*) subsection (7)

FORMS – 10 / 66

Summary Cause:

- Rule 5.5 (*Service on persons whose address is not known*)
- Rule 23.8 (*Service of charge where address of defender is not known*)

FORMS – 14

Other rules:

Act of Sederunt (Actions for removing from heritable property) 2012 ([SSI 2012/136](#))

- Rule 3 (*Charge for removing*)
 - Paragraph (5)(b) and Paragraph (6)

Act of Sederunt (Chancery Procedure Rules) 2006 ([SSI 2006/292](#))

- Schedule – Chancery Procedure Rules - Rule 4 (*Publication*)
 - Paragraph (2)

Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 ([SSI 2016/313](#))

- Rule 6.6 (*Authority to serve by other means*)

Rules that specify what not to publish:

Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 ([SSI 2009/284](#))

- Schedule – Sheriff Court Adoption Rules – Rule 6 (*Service of documents*)
 - Reapplies OCR rule 5.6

ANNEX 2 – THE RULES TO BE AMENDED ...*continued*

Insolvency:

Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 ([SSI 1986/2297](#))

- Rule 19 (*Intimation, service and advertisement*)
 - Paragraph 2(a) and paragraph 6 (b)

Appointment of an Executor Dative:

Act of Sederunt (Confirmation of Executors) 1964 ([UKSI 1964/1143](#))

- Schedule 2 (*Form of a petition for appointment of an executor to a deceased person*)

Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service) 1971 ([UKSI 1971/1165](#))

- Section 2 (*Intimation of petitions for the appointment of executors*)
 - Paragraph 2

Other Appointments:

Act of Sederunt (Judicial Factors Rules) 1992 ([UKSI 1992/272](#))

- Rule 6 (*intimation and service*)
- Rule 23 (*intimation and service*)

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 ([UKSI 1991/1397](#))

- Rule 7 (*Applications for recommendation for commission as messenger-at-arms*)
 - Paragraph 3
 - Rule 8 (*Application for commission as sheriff officer*)
 - Paragraph 3
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