



Scottish
Civil Justice
Council

DATA PROTECTION IMPACT ASSESSMENT (DPIA):

PROVIDING AMENDED COURT RULES TO SUPPORT:
Online Intimation

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

REGARDING: the impacts of the proposed rule changes that will confirm the use of 'online intimation' as the permanent court procedure

LAST UPDATED: **31 October 2024**

Step 1 – POLICY BACKGROUND

Is this a mandatory or discretionary DPIA?

This is a discretionary DPIA which has been prepared as a matter of “good practice”.

The need to provide a mandatory DPIA would only arise in situations where the data or the way it is processed could result in “*a high risk to the rights and freedoms of individuals*”. The data processed for 'online intimation' will fall well below that high risk 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.

What is the purpose of this data processing activity?

Background

Where the court does decide the “intimation” of proceedings is to include advertising then the updated policy position is for the relevant abbreviated notices to be advertised online.

The three proposed changes are:

- *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; to shift the notification of any potential Executor Dative appointment to 'direct intimation' (*in due course*).

Rationale for this intervention

The digital solution introduced during the pandemic has already modernised the courts and these rule changes will permanently retain those benefits.

The existing digital service

Where the “intimation” of proceedings includes advertising then the resultant abbreviated notices are advertised online via the following pages on 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>

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 the 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 -

All rules are promulgated as Acts of Sederunt so that they take legal effect as enactments. That means all data processing by the SCTS to deliver what is required under court rules 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.

Documenting the underlying purpose of each COURT RULE within this paper confirms that the required data processing will also comply 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 being shared?

NO – for Petitions Procedure

Only the NAME of the petitioner is specified in the abbreviated notice. That does not constitute “personal data”:

<i>Generic Situation</i>	<i>Personal Data</i>	<i>Other Data</i>
Petitions	NAME (of petitioner) NAME (of petitioners agent)	TYPE OF APPLICATION PURPOSE OF PETITION

YES – for Whereabouts Unknown

The NAME and ADDRESS of both the pursuer and the defender is specified when seeking to progress contact with a defender whose whereabouts are unknown. That does constitute “personal data” enabling the identification of both individuals:

<i>Generic Situation</i>	<i>Personal Data</i>	<i>Other Data</i>
Whereabouts unknown	NAME (of pursuer) ADDRESS (of pursuer) NAME (of defender) ADDRESS (of defender)	COURT CASE REFERENCE NUMBER TRADING NAME OR REPRESENTATIVE CAPACITY (if applicable) COMPANY REGISTRATION NUMBER (if applicable)

YES – for Insolvency

The NAME and ADDRESS of all petitioners and the respondent must be specified to convey the necessary information to shareholders, creditors and the wider public. That does constitute “personal data” enabling identification:

<i>Generic Situation</i>	<i>Personal Data</i>	<i>Other Data</i>
Insolvency	NAME (of petitioner) ADDRESS (of petitioner) NAME (of respondent) ADDRESS (registered office of respondent)	COURT CASE REFERENCE NUMBER COMPANY REGISTRATION NUMBER

YES - for the Appointment of an Executor Dative

The NAME and ADDRESS of the petitioner is specified in the abbreviated notice, which does constitute “personal data” enabling their identification. Under GDPR the protections for “personal data” only apply to the living - so the NAME and ADDRESS of the deceased is not “personal data”:

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

NO – for Other Appointments

Only the NAME of the petitioner is specified in the abbreviated notice. That does not constitute “personal data”:

<i>Generic Situation</i>	<i>Personal Data</i>	<i>Other Data</i>
Petitions	NAME (of petitioner) NAME (of petitioners agent)	TYPE OF APPLICATION PURPOSE OF PETITION

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

YES – for Petitions Procedure

The applicants name helps to determine whether any other person might establish a legal “interest” in that case. Adding the ‘type of case’ allows that other person to assess whether they may wish to apply to join those proceedings as a third party, or to initiate similar proceedings (if there is a wider systemic issue).

YES – for Whereabouts Unknown

The pursuers name and location is necessary to assess the context for the proceedings raised. The defenders name and last known address is key to that person determining whether they are the intended recipient; which in turn will support them defending their legal rights under the civil law.

YES – for Insolvency

The petitioner’s name and address is required to assess the context of the winding up petition lodged. The respondents name and registered office is key to any shareholders, creditors and potential customers being able to take steps to protect their own interests.

YES - for Appointments of an Executor Dative

Disclosure of the deceased’s name and address is needed in order to establish the estate in question. Disclosure of the petitioners name and address is core to the recipients making an assessment of a) whether that person is an expected executor for this particular estate or b) whether they might be considered as an unsuitable person; which may trigger an objection being lodged with the court.

YES – for other appointments

The petitioners name is core to any recipient making an assessment of whether the petitioner might be considered a suitable person to be appointed to that statutory office.

Can the data be obtained elsewhere?

YES – for Petitions Procedure

- The petitioners name can be determined from a ‘case title’ once published in the court rolls (*if a case proceeds to a hearing*); and
- The petitioners name can be determined from a ‘case title’ if a court opinion is published once a case has been disposed of.

YES – for Whereabouts Unknown

- The pursuer and defenders name can be determined from a ‘case title’ once published in the court rolls (*if a case proceeds to a hearing*).

YES – for Insolvency

- A company’s registered office is available as a matter of public record.

YES - for Appointments of an Executor Dative

- The deceased’s name may already be in the public domain if a death notice or obituary has been published by others (in a newspaper or online);
- The petitioners name may be determined from the ‘confirmation’ itself when issued or when the “confirmation certificates” are issued for the deceased’s listed assets; and
- Once the SCTS uploads the summary details of each confirmation onto its CODA system then by statute that data becomes a matter of public record, allowing any petitioners name and address to be accessed on request, and payment of the fee.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON DATA PROCESSING

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

Petitions procedure in the Court of Session:

The blanket publication of all actions raised under petitions procedure in the Court of Session is providing a necessary legal safeguard in the public interest, to support “open justice”. These notices raise awareness of the type and frequency of any actions that are seeking a specific judicial authority, so that other citizens and public bodies may consider taking action in response.

Whereabouts unknown:

It is in a defenders interest to be fully informed of any pending legal action, so they then have a choice on whether to object to the competency of the action or to lodge defences. Where a defender cannot be located then the courts ability to issue a “decree in absence” has the potential to create a greater harm to their personal reputation / assets / legal rights than the lesser harm from disclosure of their personal data.

Insolvency

The blanket publication of all petitions for winding up a company is a necessary legal safeguard in the public interest, to support “open justice”. These notices raise awareness of the potential insolvency so that the directors, creditors, potential customers and shareholders are aware and may take steps to protect their interests.

Appointment of Executor Dative:

Receiving advance notice of a petition for the Appointment of an Executor Dative, combined with the ability to lodge a caveat, has been seen as a sufficient legal safeguard in the public interest until now as it enables the relatives and others with an interest in the estate to take pragmatic steps to make any objections known to the court before a decree is issued. If an uncontested appointment resulted in an unsuitable person gaining control of an estate it would have the potential to create far greater harm to the rights of relatives and other potential beneficiaries in comparison to the lesser harm from disclosure of the petitioner’s personal data.

Other Appointments

Receiving advance notice of a petition for the appointment of a judicial factor, a sheriff officer or a messenger at arms is intended to provide those with an interest in such appointments the opportunity to raise any objections. The powers exercised by

a person appointed to those roles has the potential to create a greater harm in comparison to the lesser harm from disclosure of that applicants name and address.

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

The reason why this data is being processed can be summarised as follows:

Subject	Purpose of data processing
Petitions	The principles of open justice justify the blanket advertising of all requests that need to seek a specific judicial authority to do something. Awareness of that information will facilitate steps being taken by other persons in similar situations, or by other public bodies holding a legal right to intervene
Whereabouts unknown	To inform an intended recipient of a pending civil action against them, so that they gain awareness of the action, the opportunity to object and the ability to make a choice as to whether they wish to defend themselves
Insolvency	To inform the directors, creditors, potential customers and shareholders that a winding up order has been sought, so that they gain awareness of the risk of insolvency and can take steps to protect their respective interests
Appointment of Executors	To inform the relatives and others of the pending appointment of an Executor Dative, so that they gain the ability to lodge an objection to an unsuitable appointment (<i>before decree is issued and an unsuitable executor acquires control of the administration of that estate</i>)
Other Appointments	To inform the profession and the public of the pending appointment of a judicial factor / sheriff officer / messenger at arms, so they gain the ability to lodge an objection with the court.

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

The data within these Abbreviated Notices will be displayed online for the notice period set:

Subject	Notice period	Process for deletion
Petitions	12 weeks	When officials upload the data from each walling slip they will set a date for deletion 12 weeks later
Whereabouts unknown	Various	When officials enter the data for each interlocutor in ICMS they will enter the date for deletion specified by the court
Insolvency	Various	Officials will enter the date for deletion when they register each petition for winding up on ICMS
Appointment of Executors	9 days ¹	Officials will enter the date for deletion (using 10 days) when they register each application on ICMS
Other Appointments	Various	Officials will enter the date for deletion when they register each application on ICMS

Petition for Appointment of an Executor - to provide a period between advertising a petition and the court granting a decree a 9 day notice period is currently set in primary legislation, whereas most time periods are based on multiples of 7 days. To give caveat holders enough time to make representations to the court the Scottish Law Commission had previously suggested using 14 days and most existing rules now default to a notice period of

¹ Reflects section 6 of the Confirmation of Executors (Scotland) Act 1858 ([UKPGA 1858/56](#))

21 days. Enacting a suggested change to 21 days would contribute to the Councils guiding principle for having similar practice and procedure across the courts.

The right to be forgotten

It is lawful for the court to hold the personal data displayed within each abbreviated notice, which is automatically deleted after the notice period set. That process for deletion supports the “right to be forgotten” in relation to the courts displaying that data online. If a third party “web scraper” was to continue repeating that information after expiry of the notice period set then the affected party 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 personal data is currently uploaded to the website as flat text files; allowing those webpages to potentially be viewed by anyone in the world with an internet browser.

The commercial decisions on the hosting provider, whether the data held will transit UK data centres only, or whether it is processed offshore are as 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 – anyone that is a party within a civil action may be exposed to reputational damage once information on the nature of proceedings is made available within the public domain.

The principle of open justice - transparency and accountability within the justice system does require an appropriate balance to be struck between a) the public’s right to justice being seen to be done b) the measures necessary to protect the public interest and c) an individual’s right to privacy.

What are the current measures in place to protect the rights of the data subjects?

Abbreviated Notices – Direction No 2 of 2020 ensures that only an abbreviated Public Notice is given, rather than requiring a full document to be displayed online.

Accessibility – to provide an appropriate platform for online intimation, the SCTS website is expected to comply with the relevant requirements of the [Digital Scotland Service Standard](#).

The standard options for intimation – The majority of civil court actions proceed on the presumption that the pursuer will evidence intimation to the defender by one of the more usual options specified in rules i.e. by post, by electronic means, by recorded delivery, by personal service etc. Using those standard options restricts the transfer of personal data to the parties involved in each litigation. The situations where ‘online intimation’ is used are agreed exceptions to those more usual methods of intimation.

Redaction – before granting access to documents in response to the publication of an abbreviated notice officials will check for the redaction of sensitive information.

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

Will additional security measures be put in place?

YES - subject to the time period required to secure a change in the law; the longer term objective for all *Petitions for the Appointment of an Executor Dative* is to shift from 'online intimation' to 'direct intimation' which will restrict the disclosure of the petitioners personal data to the limited number of parties with a direct interest in the deceased's estate. This "Public Consultation" looks to gather respondent's views on progressing that option.