



Scottish
Civil Justice
Council

EQUALITY IMPACT ASSESSMENT:

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 'online intimation' as the permanent court procedure

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Step 1 – POLICY BACKGROUND

What is the purpose of this policy?

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

Why is this policy being developed or revised now?

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

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

Pursuers – whereabouts unknown - will be signposted to the online intimation service that uses the public notices webpage.

Petitioners - petitions procedure – will be signposted to the Court of Session process for completing walling slips which are then used to update the rolls of court.

Petitioners – insolvency procedure - will be signposted to the online intimation service that uses the public notices webpage.

Petitioners - executor dative – will initially be signposted to the online intimation service that uses the public notices webpage. Longer term those petitioners change to a procedure based on providing ‘direct intimation’.

Pursuers – other appointments - will be signposted to the process for online intimation using the public notices webpage.

What research has influenced the development of this policy?

Judicial Decision Making

Equal Treatment Bench Book – The [equal treatment bench book](#) details the way in which the judiciary in Scotland currently respond to the needs of all those with protected characteristics.

Judicial Discretion - There is an overarching duty on the court to protect “the right to a fair hearing” and to ensure that cases proceed “in the interest of justice”. To do that, the court regularly makes directions that take into account the specific circumstances affecting the parties to civil proceedings.

Technology

Digital Strategy - The SCTS [Corporate Plan 2023-2026](#) sets a clear direction of travel based on developing a fully digital end-to-end service across all civil business types.

Digital Standards – In February 2021, the Scottish Government maintains the [Digital Scotland Service Standard](#). When designing and delivering any digital service the SCTS works towards meeting those standards. Standard number 5 (*make sure everyone can use the service*) is of particular relevance regarding the consideration of equality impacts.

How does this policy support the public sector equality duty?

The Council does not provide front line public services.

The Council does provide ‘functions of a public nature’ when it is proposing draft court rules for consideration by the Court of Session, so it must give ‘due regard’ to the general equality duties set out under the Equalities Act 2010:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

How has feedback from equality groups helped to this shape the policy?

As part of the pandemic response the digital service that supports ‘online intimation’ has been operational since 2020.

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>

The feedback to date indicates that digital service is the preferred method in this increasingly digital world, and no one is suggesting a return to using the physical walls of court

The Council notes that a ‘protected characteristics survey’ is included in all emails issued as part of the normal user interactions with the Civil Online system. The feedback received will assist the SCTS in continuously evolving that digital service.

Step 2 – ASSESSMENT OF LIKELY EQUALITY IMPACTS

When considering equality impacts, readers should note the differing roles of the organisations that support the judiciary:

- The “rule making” function sits with the Scottish Civil Justice Council (SCJC):
 - The Council looks to make reasonable adjustments within the proposed rules in order to anticipate the needs of those with impairments; and
- The “service delivery” function is provided by the Scottish Courts and Tribunal Service (SCTS)
 - The SCTS designs and delivers the frontline digital services (*websites, video platform, telephone platform, helpdesks etc.*) that in turn support the rules in use. They look to make any reasonable adjustments required within their front line services.

This EQIA is narrated from the perspective of the Council and it is focused on those impacts that arise from the **rule making** function and can be addressed in those rules.

<p>ALL COURT USERS</p>	<p>METHODS FOR INTIMATION – the majority of civil actions will intimate that litigation has been commenced via one of the standard methods - by personal service, by recorded delivery, by post, by electronic means etc.</p> <p>The court will only add in the requirement to advertise by way of “online intimation” by exception; hence these amending rules will only have practical impact on a minority of all civil cases.</p> <p>DIGITAL SERVICES – where an intimation does need to include “online intimation” the content of the abbreviated notice is displayed on the SCTS website via either the public notices webpages or via inclusion in the electronic rolls of court.</p> <p><i>Digital Services – reasonable adjustments</i></p> <p>The amending rules will be drafted on the basis that they would need to remain agnostic to any specific digital service provided (either now or in the future).</p> <p>LEGAL TERMINOLOGY - The legal profession uses complicated legal terminology that can make procedures difficult to understand for those without legal training. That will be problematic for a party with more complex communication needs as they will already have a sense of separation from the other people involved in the proceedings, and that will be heightened where that legal language hinders their understanding and ability to participate.</p> <p><i>Terminology – Reasonable adjustments</i> - the rules only specify the use of “abbreviated notices” which keeps the content being communicated to a minimum. Removing all references to the “walls of court” avoids any need for users to undertake research to understand what that legal term means.</p>
<p>AGE</p>	<p>DIGITAL EXCLUSION – compared to the general population there is a larger cohort of the elderly who do not use the internet.</p> <p><u>Online Notices – positive impacts</u></p> <p>For those elderly who are digitally competent, the ability to view online notices will be seen as preferable - as it saves the cost and inconvenience of otherwise travelling to a courthouse.</p> <p><u>Online notices – negative impacts</u></p> <p>For those elderly who are not digitally competent, the ability to view online notices will be of little use. They may choose to incur the cost and inconvenience of travelling to a courthouse if they know to expect that notice. Where there is already an awareness that an</p>

	<p>elderly person is not online then the pursuer or the court may have already opted for an alternate method for intimation (if appropriate).</p>
DISABILITY	<p>DIGITAL EXCLUSION – compared to the general population there is a larger cohort of the disabled who do not use the internet.</p> <p><u>Online Notices – positive impacts</u></p> <p>For those with impairments who are digitally competent, the ability to view online notices will be preferable - as it saves the cost and inconvenience of otherwise travelling to a courthouse.</p> <p><u>Online notices – negative impacts</u></p> <p>For those who have impairments but are not digitally competent, the ability to view online notices will be of little use. They may incur the cost and inconvenience of otherwise travelling to a courthouse if they are otherwise expecting the notice. Where there is an awareness of the impediment the pursuer or the court may opt for an alternate method for intimation; if appropriate.</p>
GENDER REASSIGNMENT	No significant impacts identified.
MARRIAGE & CIVIL PARTNERSHIP	No significant impacts identified.
PREGNANCY & MATERNITY	No significant impacts identified.
RACE	<p>LANGUAGE – for those who use English as a second language, or do not understand English at all, a reference to using “the walls of court” is likely to remain a mystery unless they or their legal representatives have a good understanding of Scots Law.</p> <p><i>Language – positive impacts</i></p> <p>The withdrawal of all references to the walls of court will make it easier for a translator to convey the content of a rule to their client.</p>
RELIGION & BELIEF	No significant impacts identified.
SEX	No significant impacts identified.
SEXUAL ORIENTATION	No significant impacts identified.