

Scottish Civil Justice Council Consultation Rules Covering the Mode of Attendance at Court Hearings

Rules of the Court of Session (RCS)

Question 1 – For the categories of case listed as suitable for an in-person hearing:

- o Do you think the general presumption given is appropriate? and
- o Would you make any additions or deletions and if so why?

The senators are of the view that for all proceedings in the Court of Session (both first instance and appellate), rather than categorise cases by reference to the type of proceedings as is proposed in the draft rules, the default position should be that in all types of proceedings any hearings which are substantive in nature should take place in-person. That default position should be capable of being departed from at the court's discretion, in the interests of justice, either on the application of the parties or on the court's initiative.

Question 2 – For the categories of case listed as suitable for a virtual hearing:

- o Do you think the general presumption given is appropriate? and
- o Would you make any additions or deletions and if so why?

The senators are of the view that for all proceedings in the Court of Session (both first instance and appellate), rather than categorise cases by reference to the type of proceedings as is proposed in the draft rules, the default position should be that in all types of proceedings any hearings which are purely procedural in nature should take place by way of attendance by electronic means. That default position should be capable of being departed from at the court's discretion, in the interests of justice, either on the application of the parties or on the court's initiative.

Question 3 – The parties can apply to change the mode of attendance if their circumstances warrant a departure from the general presumption:

- o Do you think lodging a motion is the right way to do that? Please explain your answer.

The senators are of the view that motion procedure is appropriate when a party wishes to depart from the default position, in whole or in part. The senators are of the view that the draft forms (Form 35B.4-A and Form 35B.4-B) are unnecessarily complex. It is sufficient for the reasons for the motion to be set out when the motion is enrolled.

Question 4 – The courts can change the mode of attendance if circumstances

warrant a different choice to the general presumption:

o Do you agree that the court should have the final say? Please explain

your answer

The senators are of the view that, whilst there should be default positions as set out in the answers to questions 2 and 3, the final say about which mode of attendance at a particular hearing is appropriate must be subject to judicial oversight and therefore the court should have the final say. This should include the power to depart from the default position on the court's own initiative.

Question 5 – Do you have any other comments to make on the proposed changes within the Rules of the Court of Session?

We refer to the accompanying paper; this sets out our reasoning in somewhat greater detail.