



**Scottish  
Civil Justice  
Council**

**TARGETED CONSULTATION: on the Ordinary  
Procedure Rules**

**July 2023**

## CONTENTS

	<u>Page</u>
Section 1 – Responding to this consultation	3
Section 2 – Executive summary	5
Section 3 – The draft rules	6
Section 4 – The consultation questions	7
Section 5 – The next steps	8
 Bibliography	 9

### Supporting Documents:

- The Draft Rules;
- The Procedural Narrative;
- Business and Regulatory Impact Assessment (BRIA);
- Equalities Impact Assessment (EQIA); and
- Respondent Information Form.

## **SECTION 1: RESPONDING TO THIS CONSULTATION**

This is a Targeted Consultation to gather initial feedback from selected users; the judiciary, the legal profession, court officials and government officials.

The consultation will be open for twelve weeks.

Written responses are invited by **Tuesday 10 October 2023**.

To respond please email [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk) with your response, along with a completed **Respondent Information Form**.

### **How your response will be handled**

Your response will be handled in line with the information you provide within the Respondent Information Form. If you are content for your response to be published it will be uploaded to our website. If you ask for your response not to be published, we will regard it as confidential, and treat it accordingly.

All respondents should be aware that the Scottish Civil Justice Council (SCJC) is subject to the provisions of the Freedom of Information (Scotland) Act 2002. If we receive a Freedom of Information (FOI) request about the responses to this consultation, any of the consultation responses (including those not published) may have to be made available when responding to that FOI request.

### **Why this is a targeted consultation?**

These proposed new *Ordinary Procedure Rules* are a key next step in progressing our comprehensive Rules Rewrite. Seeking initial feedback on the general approach we are taking requires a mix of specialist technical expertise along with good practical working experience of the multiple existing rules in use. We expect that expertise to sit with the regular recurrent users of those court procedures such as:

- Judges who deal with the actions currently initiated under ordinary procedure or petition procedure within the Court of Session;
- Sheriffs and summary sheriffs who deal with the actions currently initiated under ordinary cause or summary application procedure in the sheriff courts
- Advocates, solicitor advocates and solicitors who represent parties within the Court of Session and/or the sheriff courts;
- Any other members of the legal profession who maintain a professional interest in the development of court procedures; and
- Court officials and government officials with an in-depth understanding of the multiple existing procedures.

The alternative of running a full Public Consultation is inappropriate at this stage. We are seeking views on the general direction of travel with regard to consolidating four existing sets of court rules. Occasional court users are unlikely to have interacted sufficiently with all of four of those procedures to form a view on how best

to proceed with their consolidation. Given the technical nature of this proposal, we do want to avoid disproportionate resource impacts for other potential respondents.

### **Who are we consulting with?**

The Council is seeking responses from the following representative bodies who do have expertise in the operation of the existing ordinary procedure and petition procedure in the Court of Session, and the Ordinary Cause Rules and Summary Application rules in the sheriff courts:

*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 Government

### **Comments and complaints**

If you wish to provide any feedback on how this consultation is being conducted then please email [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

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## SECTION 2: EXECUTIVE SUMMARY

### Purpose

1. This consultation is seeking feedback on the merits of having the one consolidated set of rules for the majority of “ordinary” actions initiated for cases over £5,000 in the sheriff courts, and for cases over £100,000 initiated in the Court of Session.

### Background

2. The Council was established in 2013 and one of the key challenges set was to progress a comprehensive Rules Rewrite:

*“A further priority would be to draw up a programme for a **comprehensive review of the rules of the Court of Session and the sheriff court with a view to consolidating or harmonising them**; introducing common terminology and procedure for those types of case that may be litigated in either court; modernising the language of the rules; and doing away with the distinction between ordinary and petition procedure in the Court of Session and between ordinary procedure and summary applications in the sheriff court. “*

*(Source – Paragraph 57- chapter 15 – Scottish Civil Courts Review)*

3. The scale of that challenge warranted the Council establishing a subcommittee to provide the long term oversight required for this multi-year programme of work.
4. The first two key deliverables for that Rules Rewrite Committee have been met:

*Deliverable 1 – THE OVERARCHING PRINCIPLES* – in May 2017 the Council published the [New Civil Procedure Rules – First Report](#). That 81 page report set out the overarching principles that would help to shape the overall purpose, form and structure of the harmonised rules. The Councils key policy decisions are summarised in Chapter 10 of that report (pages 75-79). The 61 page annex adds background for the policy decision that has been taken to merge summons procedure and petitions procedure.

*Deliverable 2 – THE PROCEDURAL NARRATIVE* – in August 2022 the Council published the [New Civil Procedure Rules – Second Report](#). That 40 page report narrates the Council’s **vision** for how a civil action could in future be progressed more efficiently from the initiation of a new case through to the eventual resolution of the matters in dispute.

5. The Committees next key deliverable is:

*Deliverable 3 – THE WORKED EXAMPLE* – this consultation version of the draft rules provides one worked example of rules that are reflective of the

overarching principles and consistent with the vision set out in the Procedural Narrative. These rules are not expected to be the final result. They are intended to promote discussion and feedback from the profession, to assist the Committee in refining subsequent iterations of these rules (with additions for forms, revocations etc.)

6. The consultation questions posed are being used to a) test how well the narrative within each rule could meet user expectations for a simplified and user friendly procedure and b) to identify suggestions for improvement.

### **The policy objectives**

7. The policy objectives are:
  - To **simplify, harmonise and consolidate** the rules for progressing straightforward civil actions so that they are easy to use and understand; and
  - To **promote consistency** between courts in the way straightforward civil actions are progressed.
8. The scope for the consolidation of these rules includes:
  - Removing the distinction between ordinary and petition procedure in the Court of Session;
  - Removing the distinction between ordinary cause and summary applications in the sheriff courts;
  - Providing a new consolidated court procedure for use when initiating any ordinary action in either court fora; and
  - Determining which parts of the four existing court procedures should be revoked, and which parts should be retained.

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## **SECTION 3 – THE DRAFT RULES**

9. The new consolidated procedure will be named the *Ordinary Procedure Rules*, to continue the naming convention started with the *Simple Procedure Rules*.
10. We are using these draft rules (34 pages) as a supporting document for this consultation only, to convey just one *worked example* of what a harmonised procedure may start to look like. The accompanying forms, revocations, consequential amendments etc. will follow with our future drafts of these rules. Several further iterations will be required before we reach the point that a final implementable version is put out for consultation and then approval.

### **Structure of the rules**

11. The overall design chosen for the layout of these draft rules is:
  - PART 1 - INTRODUCTION.

- PART 2 - PROGRESSING A CASE.
  - PART 3 - MATTERS ANCILLARY TO PROGRESSING A CASE.
  - PART 4 - OPTIONS TO JOIN OR TRANSFER A CASE.
  - PART 5 – THINGS TO DO WITH ENFORCING A CASE.
  - PART 6 – ONLINE APPLICATIONS, FORMS AND OTHER OPTIONS, INTERPRETATION ETC.
12. That allows items such as the statement of purpose (rule 3) to take prominence at the beginning of these rules with the items be referred to very occasionally such as interpretation clauses (rule 95) relegated to the end.
13. The core elements a practitioner would need on a daily basis are set out in Part 2 (Progressing a case) with its chapters reinforcing a focus on active judicial case management and the revised steps in legal process:
- Chapter 1 - commencing a case.
  - Chapter 2 - responding to a case.
  - Chapter 3 - handling an undefended case.
  - Chapter 4 - early decisions or disposal of a defended case.
  - Chapter 5 - case management options.
  - Chapter 6 - substantive hearings.
14. The information that a practitioner may need to refer to less frequently is then found by navigating through Parts 3 to 6 of the rules as and when required.

### **The content of the rules**

15. This *worked example* must be read in conjunction with the attached Procedural Narrative which conveys the vision for these rules, and the policy background for why each rule has been drafted in the manner shown. The policy aim is for each rule to be drafted as succinctly and concisely as possible. That said, there are some rules where more complex legal terminology does need to be retained to provide legal certainty.

### **The size of the rules**

16. The current 34 page procedure is comprised of 99 rules in total, with the principal purpose of each conveyed via the cross headings provided.

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## **SECTION 4 – THE CONSULTATION QUESTIONS**

17. Consultees are invited to consider the draft rules as circulated, along with the contents of this paper and the accompanying Procedural Narrative.
18. Consultees should then respond to the following questions:

**Question 1** – Will the “look and feel” of these consolidated rules provide court users with the simplified, harmonised and user friendly procedure sought?

**Question 2** – Are there any individual rules you think users might find difficult to implement and comply with, and if so what would you do differently?

**Question 3** – Can you suggest any additional rules, or changes in layout, that would improve these consolidated rules?

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## **SECTION 5 – THE NEXT STEPS**

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

*Responses* - as soon as practicable each individual consultation response will be uploaded to the consultation page of the Council’s website (for those respondents who have given their permission);

*Analysis of Responses* – the Council’s secretariat will then prepare an Analysis of Responses paper for consideration by the Committee, and publication via the Council’s website.

*Consultation Response* - having considered the Analysis of Responses, the Committee will plan the most appropriate next steps to progress the comprehensive Rules Rewrite over the coming years.

*The New Civil Procedure Rules – Third Report* - the policy decisions taken by the Council will be published later in the 2023-24 planning period.

**Secretariat to the Scottish Civil Justice Council  
July 2023**



## BIBLIOGRAPHY

### **Council Publications:**

New Civil Procedure – First Report – the Overarching Objectives (May 2017, SCJC)  
[https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/the-new-civil-procedure-rules---first-report-and-annex.pdf?sfvrsn=4b295bd2\\_2](https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/the-new-civil-procedure-rules---first-report-and-annex.pdf?sfvrsn=4b295bd2_2)

New Civil Procedure – Second Report – the Procedural Narrative (Aug 2023, SCJC)  
[https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/paper-4-1b---the-new-civil-procedure-rules---second-report.pdf?sfvrsn=26c0bae3\\_2](https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/paper-4-1b---the-new-civil-procedure-rules---second-report.pdf?sfvrsn=26c0bae3_2)

### **Existing Rules:**

#### *Court of Session:*

- [Rules of the Court of Session](#) (RCS)

#### *Sheriff Courts:*

- [Ordinary Cause Rules](#) (OCR)
- [Summary Applications, Statutory applications and Appeals etc. Rules](#)

### **Justice Reforms:**

Report of the Scottish Civil Courts Review – Vol 1 – Chapters 1 to 9 (Sep 2009, Scottish Government)  
[https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf?sfvrsn=30b62fd3\\_4](https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf?sfvrsn=30b62fd3_4)

Report of the Scottish Civil Courts Review – Vol 2 – Chapters 10 to 15 (Sep 2009, Scottish Government)  
[https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-2-chapt-10---15.pdf?sfvrsn=3ab62fd3\\_4](https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-2-chapt-10---15.pdf?sfvrsn=3ab62fd3_4)