



Scottish
Civil Justice
Council

EQUALITY IMPACT ASSESSMENT:

For the proposed: ORDINARY PROCEDURE RULES

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

REGARDING: The new Ordinary Procedure Rules, which are being developed as part of the comprehensive *Rules Rewrite* being undertaken by the Council

LAST UPDATED: 17 July 2023

Step 1 – POLICY BACKGROUND

What is the purpose of this policy?

Background:

The option of consolidating rules into one harmonised court procedure is a proportionate means of reducing the complexity of the rules and improving their readability.

Policy Objectives:

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.

Why is this policy being developed or revised now?

The need for a comprehensive *Rules Rewrite* was recommended by the Scottish Civil Courts Review in 2009. Progressing that review became a key deliverable for the Council following its establishment in 2013. The Council published a paper on the overarching principles to be used when shaping the new rules in 2017. A Procedural Narrative outlining how the revised steps in legal process could work was published in 2022.

The reasons for taking further action now are:

- To provide the judiciary and the profession with a working draft of the consolidated rules aligned to the vision set out within the Procedural Narrative;
- To improve the readability and the usability of the information provided to users; and
- To support a more consistent approach being taken across the courts

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

The consolidated rules will:

- Amend and restate the generic information any litigant requires to progress a straightforward case through the Scottish civil justice system.

The more complex civil cases will continue to be progressed through the existing specialised procedures, which will continue to operate alongside the new *Ordinary Procedure Rules*.

Court Users

For cases commenced under the new procedure - court users will only need to familiarise themselves with what is required under the consolidated rules, rather than working through the multiple existing court procedures to establish the most appropriate route for their litigation.

Court Staff

Court officials will need to familiarise themselves with this new set of consolidated rules, and maintain a reasonable working knowledge of the procedures it replaces for several years (until all old cases have worked their way through the system)

Judicial Office Holders

The judiciary will need to familiarise themselves with this new set of consolidated rules, and maintain a reasonable working knowledge of the procedures it replaces for several years (until all old cases have worked their way through the system).

Council Members

The introduction of these consolidated rules will demonstrate a significant step forward in the work required to support delivery of the comprehensive *Rules Rewrite*.

What research has influenced the development of this policy?

Judicial Decision Making

Equal Treatment Bench Book – The [equal treatment bench book](#) sets out in some detail the way in which the judiciary in Scotland responds to the needs of all those with protected characteristics.

Judicial Discretion – The court has an overarching duty to protect the right to a fair hearing and to ensure that cases do proceed in the interest of justice. To do that, the court regularly makes directions to take into account the specific circumstances affecting any party to civil proceedings.

Technology

Digital Strategy – the [SCTS Digital Strategy 2018-2023](#) sets a clear direction of travel based on the gradual adoption of digital technologies within the courts, with a particular emphasis on reducing the need for unnecessary personal appearances in courtrooms. In March 2021, the Scottish Government refreshed its own digital strategy and published [A changing nation: how Scotland will thrive in a digital world](#). It emphasises that when moving services online there is a need to ensure that: everyone can access services, there is a reduction in inequalities, and that the least advantaged in society are not excluded from the services they may need the most.

Digital Standards – In February 2021, the Scottish Government launched the [Digital Scotland Service Standard](#) as a replacement for the previous Digital First Service Standard. When designing and delivering digital services the SCTS works towards meeting those standards. Standard number 5 (make sure everyone can use the service) is of particular relevance regarding equality impacts.

Virtual Hearings

- Cisco WebEx supports the virtual hearings that take place by video
- BT MeetMe supports the virtual hearings that take place via telephone.

Equalities

Inclusive Justice: A System Designed For All, – In June 2020, the Equality and Human Rights Commission published the outcome of their [review](#) into the way in which those with disabilities are treated by the justice system in England and Wales, and in Scotland. The report has a particular emphasis on the way technology roll out takes place and its potential impacts on the disabled accused.

User Experience

Civil Justice Conference (May 2021) – this Judicial Institute conference enabled the judiciary and practitioners to share their experiences of handling civil business remotely during the response to the pandemic. The outcome report is available [online](#).

How does this policy support the public sector equality duty?

The Council does not provide front line public services. It does provide ‘functions of a public nature’ when proposing draft rules for consideration by the Court of Session, so it must give ‘due regard’ to the general equality duties under the Equalities Act 2010:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

The rules provide a generic process for use with straightforward civil cases. That generic approach ensures they are neutral in their effect on those with disabilities and those without.

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

The rules provide a generic process for use with straightforward civil cases. For those with impairments, disclosure to the court of factors unique to their circumstances can help support their effective participation in the proceedings that do take place under the new consolidated rules.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

As the information presented will be easier to use and understand; the shift to consolidated rules will assist both those with disabilities and those without in their understanding of the way in which the justice system works.

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

This EQIA incorporates feedback from the work undertaken by the SCTS with various equalities groups.

Step 2 – ASSESSMENT OF LIKELY EQUALITY IMPACTS

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

- The “rule making” function sits with the Scottish Civil Justice Council (SCJC) – we are responsible for making reasonable adjustments within our proposed rules, to anticipate the needs of those with impairments.
- The “service delivery” function sits with the Scottish Courts and Tribunal Service (SCTS) including:
 - The staff, buildings and services to support the day to day operations of the courts: and
 - The digital services (*websites, video platform, telephone platform, helpdesks etc.*) that support the rules in use.

The SCTS is responsible for making reasonable adjustments within those frontline services.

This EQIA is narrated from the Council’s perspective, focused on the rule making function. Some SCTS initiatives for improving frontline services are signposted (if relevant).

IMPACTS APPLICABLE TO ALL COURT USERS

CASE MANAGEMENT

The rules reflect a shift to active judicial involvement in case management, leading to a more tailored approach being taken to the matters in dispute within each case.

Case Management – positive impacts

Tailoring the approach supports more effective participation in the case being managed, which in turn will support proportionate and just conclusions for that case being reached on a timely basis.

CONSOLIDATION

Users will access the court procedure they need to follow via the one consolidated set of rules, rather than having to navigate and choose between four separate procedures.

Consolidation – positive impacts

Users will be able to familiarise themselves with a procedure presented in a more accessible manner. The reduced page count will shorten the reading time required for familiarisation. The layout will support faster navigation to the key steps in legal process, as well as the information required less frequently.

DIGITISATION

The consolidated rules mirror current arrangements for virtual hearings, electronic transmission of documents, electronic signatures, electronic walls of court etc. The rules do not add new digital services, so no new impacts arise for this EQIA.

Readers can review the impacts of the rules that cover existing digital services by viewing the EQIA that supports the Attendance at Hearings Rules.

LEGAL TERMINOLOGY

The legal profession does use complicated legal terminology which can make the procedures in the civil courts difficult to understand for both party litigants and represented parties. That becomes far more problematic for those with more complex communication needs.

	<p><u>Terminology – negative impacts</u></p> <ul style="list-style-type: none"> Those with communication difficulties already have a sense of separation from the other people involved in a case, which will be heightened where the use of complex legal language and processes hinders their understanding and ability to participate <p><i>Reasonable adjustments - in court rules:</i></p> <ul style="list-style-type: none"> <i>Usability</i> - the consolidated rules are briefer and written as succinctly as possible so that they will be easier to use and understand (relative to the multiple procedures they replace). <p><i>Reasonable adjustments - in working practices:</i></p> <ul style="list-style-type: none"> <i>Participation</i> – the consolidated rules reflect the existing duty on the judiciary to monitor that those with impairments can understand what is happening, with proceedings adjusted as required to support their effective participation.
AGE	<p>DIGITAL EXCLUSION – compared to the general population there is a larger cohort of the elderly who do not use the internet. Readers can review the impacts of the rules that cover existing digital services by viewing the EQIA that supports the Attendance at Hearings Rules.</p>
DISABILITY	<p>DIGITAL EXCLUSION – compared to the general population there is a larger cohort of those with impairments who do not use the internet. Readers can review the impacts of the rules that cover existing digital services by viewing the EQIA that supports the Attendance at Hearings Rules.</p>
GENDER REASSIGNMENT	No significant additional impacts identified
MARRIAGE & CIVIL PARTNERSHIP	No significant additional impacts identified
PREGNANCY & MATERNITY	No significant additional impacts identified
RACE	<p>LANGUAGE – for those who use English as a second language, or do not understand English at all, there is added complexity when trying to utilise an interpreter to interpret the requirements within the rules or to participate in a hearing. That act of translating can add significant time and cost to proceedings.</p> <p><u>Translation – positive impacts</u></p> <p>The reduction of four court procedures into one consolidated set of rule of rules will reduce the page count. That in turn should reduce</p>

	the time required for translation, improve the messaging provided to the court user and reduce the cost.
RELIGION & BELIEF	No significant additional impacts identified
SEX	<p>DIGITISATION / VIRTUAL HEARINGS</p> <p>Parental caring duties are the responsibility of both parents, however in the UK, Office of National Statistics data¹ show that women carry out an overall average of 60% more unpaid work (than men) when it comes to childcare, cooking and housework. Access to virtual hearings can have positive impacts for women.</p> <p>Readers can review the impacts of the rules that cover existing digital services by viewing the EQIA that supports the Attendance at Hearings Rules.</p>
SEXUAL ORIENTATION	No significant additional impacts identified.

1

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/womenshouldertheresponsibilityofunpaidwork/2016-11-10>